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THE PRESENT STATE OF THE STUDY OF POLITICS

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The original plan of this paper included a general survey and critique of the leading tendencies in the study of politics during the last thirty or forty years. It was intended to compare the methods and results of the various types of political thought—to pass in review the historical school, the juridical school, the students of comparative government, the philosophers as such, the attitude of the economist, the contributions made by the geographer and the ethnologist, the work of the statisticians, and finally to deal with the psychological, the sociological, the biological interpretations of the political process.

It would have been an interesting and perhaps a useful task to compare the scope and method of such thinkers as Jellinek, Gierke, Duguit, Dicey and Pound; the philosophies of Sorel and Dewey, of Ritchie and Russell, of Nietzsche and Tolstoi; to review the methods of Durkheim and Simmel, of Ward and Giddings and Small; of Cooley and Ross; and to discuss the developments seen in the writings of Wallas and Cole.

It would have been useful possibly to extend the analysis to the outstanding features of the environment in which these ideas have flourished, and to their numerous and intimate relations and interrelations. It might have been possible to discuss

the influence of social and industrial development, of class movements and struggles, or of group conflicts in the larger sense; to examine the influence of urbanism and industrialism; of capitalism, socialism and syndicalism; of militarism, pacificism, feminism, nationalism. It would perhaps have been useful to offer a critique of the methods and results portrayed; to make a specific appraisal of the value of the logical, the psychological, the sociological, the legal and the philosophical and the historical methodologies and their respective contributions to the study of the political.

This task was abandoned, however, and reserved for another occasion, as it became evident that no such survey could be condensed within reasonable limits. It seemed that our common purpose might be better served by a different type of analysis, aiming at the reconstruction of the methods of political study, and the attainment of larger results alike in the theoretical and the practical fields.

Within relatively recent times the theory of politics has come in contact with forces which must in time modify its procedure in a very material way. The comparatively recent doctrine that political ideas and systems—as well as other social ideas and systems—are the by-products of environment, whether this is stated in the form of economic determinism or of social environment, constitutes a challenge to all systems of thought. It can be ignored only under the penalty of losing the *locus standi* of a science. Systems may justify themselves as sounding boards of their time, but what becomes of the validity of the underlying principles usually announced with dogmatic and authoritarian emphasis?

Again, in our day the measuring scales of facts and forces have been made much finer and more exact than ever before in the history of the race. The measuring and comparing and standardizing process goes on its way, impelled by the hands of thousands of patient investigators who pursue the truth through the mazes of measurable and comparable facts. To what extent has this increased accuracy of measurement and facility in comparison of standardized observation found its way into the field of the political?

Further, on the borders of politics there have appeared in our day many allied disciplines of kindred stock. Statistics and psychology, biology, geography, ethnology and sociology have all developed and continue to produce masses of material facts, of interpretations and insights, correlations and conclusions, often bearing, directly or indirectly, upon the understanding of the political process. We may appropriately raise the question, to what extent has politics availed itself of the researches and results of these new companions in the great search for the understanding of the phenomena of human life?

Certain suggestions as to ways and means by which the technical and professional study of politics may be improved in quality and serviceability are worth some discussion. There is the question of a mechanism for the collection and classification of political material. In many ways politics has been outstripped in the race for modern equipment supplying the rapid, comprehensive and systematic assembly and analysis of pertinent facts. For business reasons the collection of certain limited classes of legal data has been systematized, and the results are promptly placed before every student of the law. For business reasons certain types of industrial data are now collected in great quantities for the use of the business man. Some of the same work is done by various bureaus of the governments. Yet in the main the political machinery is still sadly defective. The best equipped research man in the best equipped institution of learning hardly has machinery comparable with that of the best lawyer in his office, or of the best engineer, or the expert of the large corporation, or the secretary of the chamber of commerce, or the research department of the Amalgamated Clothiers. The truth is that he often has no laboratory equipment at all, and curiously enough in these days of large scale organization, he labors single-handed, even when he discusses this characteristic feature of our civilization. In this respect the political and social sciences have been generally outstripped by the so-called "natural" sciences—now often dropping the "natural"—which are far better supplied with the personnel and facilities for research.

On a larger than individual scale, there is a lack of prompt and adequate collections of great classes of laws, orders and rules. The admirable collection of the New York State Library has been discontinued and the gap never filled. The same thing is true of municipal ordinances, collections of administrative regulations, and judicial data except for reported cases. On an international scale the field is scarcely touched. It is not to be expected that political data for scientific purposes should be as quickly gathered as crop reports or legal decisions, but need the data be as scantily and infrequently reported as is now the case?

Further, the reasonably complete and prompt collection of material regarding the practical workings of political institutions is largely unorganized and only spasmodically assembled, often by propaganda agencies rather than by scientific bodies. How, for example, is material made available at present regarding the workings of the system of proportional representation, or the city manager plan of government? Chiefly by the haphazard, irregular and unsatisfactory process of observation and compilation by inadequately equipped individual workers. There is neither fund nor personnel available for extended surveys of many important fields regarding which politics should speak with some authority.

Only through the organized and persistent effort of many scholars can this defective situation be made a satisfactory one. With the coöperation of the various governmental agencies, of the several institutions of learning, and perhaps of private research funds, the workers in political science may be placed on a basis where necessary data and assistance will be available for technical use. But until then we limp where we might run.

It is not impossible that political prudence might be more effectively organized than at present. By political prudence is meant the conclusions of experience and reflection regarding the problems of the state. This constitutes a body of knowledge which, though not demonstrably and technically exact, is nevertheless a precious asset of the race. Of course it is not meant to suggest that all of this prudence is found with the professional students of politics—God forbid—but the initiative in the scientific assembly and analysis of this material may fairly be said

to be one of our tasks. Certainly this falls within no other domain. It seems desirable that this mass of information, analysis, conclusion, tentative and dogmatic, accumulated by the professional students of politics should be more fully known than at present. All other groups, professional and otherwise—and there are many new ones in the last generation—express their views upon all manner of questions of state; why not the student of politics who is usually most nearly disinterested in his point of view, more comprehensive in his investigation, and impartial in his conclusions?

What is the judgment of the world's students of politics upon such problems as proportional representation, "the" or "a" League of Nations, freedom of speech under twentieth-century conditions, public ownership of public utilities—these only by way of suggestion? In many instances the counsels of professional students of politics, or of political prudence, would be divided, particularly when class, racial or nationalistic issues were raised, but in many other instances they would be united. Even their divisions would presumably rest upon at least superficially scientific grounds, and would help to turn the organization of opinion upon carefully investigated facts and careful reasoning, rather than upon group interests awkwardly disguised in ill-fitting garb. But if professional students of politics cannot come together to discuss even the fundamentals of political prudence because of the fear of violent disagreement, should not that circumstance itself cause sober reflection as to their fundamental preconceptions; and might it not suggest remodelling and reorganization of their methods? Might it not point to the weak spot in their procedure and in time lead to its strengthening?

That professional students of politics should upon all occasions and upon every transient issue rush to announce their theories and conclusions with an air of finality, is certainly not to be desired. But upon grave questions of long standing, where exhaustive inquiries have been made and all phases of a problem maturely considered, the professional opinion of special students has a certain value. Further, if students were equipped with

resources for exhaustive researches through expert commissions on occasional topics, such documented inquiries and the deliberate findings based upon them might prove to be of very great use. Practical experience and observation do not lead to the conclusion that electorates or parliamentary bodies or administrative agencies are waiting breathlessly for the pronouncements of political science associations; but on the other hand the same experience and observation do suggest that they would on many occasions welcome the very sort of information, analysis and tentative conclusions of political prudence that serious professional organizations of this type could supply.

The broader the base of such a professional organization, the more effective it should be. An organization of many cities would be better than one, of many states than one, of many nations than one. For in the larger unit there is an opportunity for the elimination of the local, the class, the racial propagandas that have historically played so large a part in the formation of political theory.

Finally the methods of politics, as of social science in general, are constantly in need of scrutiny and revision in order to avoid falling into a category that is neither scientific science nor practical politics. Of the extent to which political theory has been conscripted in the service of class and race and group we have been admirably informed by Professor Dunning. A much earlier writer says:

In law what plea so tainted and corrupt
But, being seasoned with a gracious voice
Obscures the show of evil? In religion
What damned error, but some sober brow
Will bless it and approve it with a text,
Hiding the grossness with fair ornament?

But that day perhaps is passing. The average man now possesses an acid test for the authoritarian doctrines which in some earlier ages he would not have been permitted to discuss, or more probably would not have thought of discussing. He begins to realize that in the excitement of racial or religious or

class struggle, political theory is likely to become a pawn or piece in the larger game of military, pecuniary, or other group advantage. So it happens that we live in a time when social contrivances and control are employed more than ever before in systematic fashion, but also in a time when authority is challenged as never before. At a time when political regulation is most comprehensive, political obligation is least firmly rooted.

Sociology and social psychology offer material of the greatest value. Geography, ethnology and biology present facts and conclusions indispensable to a correct understanding of the political process, which tend to make the knowledge of that process less closely dependent upon authoritarian propaganda, and nearer the domain of scientific technology.

Statistics increase the length and breadth of the observer's range, giving him myriad eyes and making it possible to explore areas hitherto only vaguely described and charted. In a way, statistics may be said to socialize observation. It places a great piece of apparatus at the disposal of the inquirer—apparatus as important and useful to him, if properly employed, as the telescope, the microscope and the spectroscope in other fields of human investigation. But whether politics has made full use of this new instrument of inquiry may be questioned.

In the narrower sense, there are standard fields where political statistics are almost completely lacking. Notable examples in this country are our judicial and criminal statistics. In the field of operative statistics, measuring services on standardized bases, little has been done. It is a legitimate function of the political scientist to aid in the development of statistical schedules, and to ask for additional information which can be developed only in this way. In the larger sense, we have not yet surveyed the possibilities of statistical observation, and fitted it to the growth of the study of politics.

Statistics, to be sure, like logic can be made to prove anything. Yet the constant recourse to the statistical basis of argument has a restraining effect upon literary or logical exuberance; and tends distinctly toward scientific treatment and demonstrable conclusions. The practice of measurement, comparison, standard-

ization of material—even though sometimes overdone—has the effect of sobering the discussion. We do not look forward, it is true, to a science of politics or of economics or of sociology based wholly and exclusively upon statistical methods and conclusions. We know that statistics do not contain all the elements necessary to sustain scientific life; but is it not reasonable to expect a much greater use of this elaborate instrument of social observation in the future than at present? Is it unreasonable to expect that statistics will throw much clearer light on the political and social structure and processes than we now have at our command?

Modern psychology also offers material and methods of great value to politics, and possibilities of still greater things. The statesmen and the politicians have always been psychologists by rule of thumb, and the political scientist and the economist have often tried to apply such psychology as their time afforded. The “natural” man of the *Naturrecht* school and of the classical political economy was described in the light of such information as the psychology of the day afforded. But undoubtedly Thorndike and others can tell us more about the *genus homo* than was given to Thomas Hobbes and Adam Smith. Even the psychologists—if we may accept the statements of some of them—have not always been strictly psychological in their method. The field wherein the physiologist and the behaviorist and the neurologist and the psycho-analyst and the biologist and the psycho-biologist are still busy evolving a method is a domain not yet reduced to constitutional order and government. But these new inquiries seem likely to evolve methods by which many human reactions, hitherto only roughly estimated, may be much more accurately observed, measured and compared.

They are likely to assist in the evolution of methods and means by which new relations will be discovered, new modes of adaptation contrived, and the processes of social and political control substantially modified. They are already suggesting methods by which much more accurate measurement of the human personality may be made, and much deeper insight into the social process be secured. Their work is likely to be supplemented by

that of group psychology; and somewhere along the line there may be developed the study of the political personality and process, and the aspects and bearings of political psychology, which has long existed in name and in practical fact, but not in systematized form. We seem to stand on the verge of definite measurement of elusive elements in human nature hitherto evading understanding and control by scientific methods. In certain fields, such as those of education and medicine, the lines have already been thrust far out into the realm of what had always been charted as the Great Unknown. Psychology, of course, like statistics does not assume to set up the standards of social science, but is an instrument or method by which students in these fields may be materially assisted.

It is not impossible that we may have, in addition to the broad observational study of unstandardizable forces and tendencies, playing so large a part in political prudence, a more basic study of measurable and comparable political reactions, of their strength and limitations, of their possibilities of adaptation and constructive organization. This more intensive study may help to solve: (1) the problems of preliminary political education, (2) of public education in the larger sense of the term, (3) of local political coördination and organization, and (4) of scientific technology. The statistical use of psychological material offers to the student of politics large areas hitherto unexplored, and insight into springs of political action up to this time only imperfectly observed.

From time to time the study of politics has been completely abreast with the current science of the time, as in the days of Aristotle, and from time to time has drifted away again into scholasticism and legalism of the narrowest type. Writers like Wolff and Thomasius, Suarez and Pufendorf, Woolsey and Sidgwick, have left us great monuments of industry and erudition. They, like many others, were of great value in the general rationalizing process of the time, but were sterile in the production of living theories and principles of political action. In our day the cross fertilization of politics with science, so called, or more strictly with modern methods of inquiry and investigation, might not be unprofitable.

In the study of international law, for example, may we not go behind treaties and conventions into a deeper study—not only of what are commonly called social and political forces, into differences of environment, language and culture—but also into a systematic examination of race and group loyalties and aversions, their genesis, strength, their modes of adaptation and organization? Instinctively the stranger is the enemy. But what has modern political science to say about the nature of this instinct and the possibilities of training, education and reorganization of it? What have the world's students of politics and kindred sciences to say upon this problem, the solution of which bears so closely upon world organization and world peace?

We have studied the urban problem in terms of “good” and “bad” government, of boss rule and reform, of innumerable mechanisms and contrivances ingeniously devised, but is it not possible to go more deeply into the basis of the city, scrutinize more accurately the social and political process of which the political is an integral part? Are the forces producing municipal misrule inherently recalcitrant and insuperably unruly, or do we not fully understand the political reactions in the given environment, and how they may best be educated and constructively adapted to new modes of life under the forms of the coöperative enterprise of democracy?

In the study of public administration may we not add to the study of rules and laws and forms of procedure and control some deeper insight into the underlying factors affecting and conditioning personnel and organization and operation of large groups of men? Will not the methods of statistics and psychology be of service to us in the prosecution of such inquiries?

In short, may we not intensify our study of the political man, the political personality, of his genesis, environment, reactions, modes of adaptation and training, and the groups of which he is a part, and of the complicated political process, to a point where the preconceptions of politics will be given a far more definite fact basis, and practical prudence a far surer touch in its dealing with the problems of state?

We may be reminded of the weird anthropology in the politics of Bodin and Montesquieu, or of Bluntschli's fearfully and wonderfully made "political psychology," in which he compared sixteen selected parts of the human body with the same number of organs of the body politic, or of the ambitious but abortive social physics of Comte, or of the array of organismic theories which Dr. Coker has so comprehensively catalogued—all these to point the danger of advancing beyond the line of strictly authoritarian or tendential and prudential politics. But on the other hand we may point to many penetrating studies in social and political organization. We may call attention to the surprising practical advances made by criminology and penology, and to the daily practical applications in social and industrial relations of information and methods drawn from the newer disciplines.

Must we conclude that it is possible to interpret and explain and measurably control the so-called natural forces—outside of man—but not the forces of human nature? Or have we overdone "nature" and underdone "man" scientifically? Is there some fundamental line of division between the cultural, the humanitarian, the scholarly, the "learned", on the one hand, and the scientific (in quotation marks) on the other, so that their methods must be fundamentally different? Perhaps it is so.

It is now nearly thirty years since the great naturalist Le Conte pointed out that art comes first, then science; then science like a daughter helps the mother. Hitherto, said he, "Social art has advanced in a blind staggering way, feeling its way in the dark, retrieving its errors, recovering its fall." But this cannot longer be. He continues: "Science must be introduced into politics only as suggesting, counselling, modifying, not yet as directing and controlling." Science "ought to be strictly subordinate to a wise empiricism. She must whisper suggestions rather than utter commands."¹

For our purposes it is not necessary or possible to read the future of social or political science. It is sufficient to say that

¹ In Brooklyn Ethical Association, *Man and the State*, 351-353.

we may definitely and measurably advance the comprehensiveness and accuracy of our observation of political phenomena, and that the processes of social and political control may be found to be much more susceptible to human adaptation and reorganization than they now are.

Here we are confronted, however, as at other points by the urgent practical necessity for better organization of our own professional research. It would be possible, both nationally and internationally, to coördinate much more closely the scattered undertakings in charge often of isolated observers and workers. The political research of our nation and of others is ill-organized, especially for a branch of knowledge that deals with organization and administration as one of its central topics. As a result, even though the available forces are small, there is some duplication of effort. There are large gaps left where there is no investigation made, and there is general lack of organized effort to break through the lines of political ignorance and prejudice. We lack comprehensive and forward looking plans, following which we might advance by measurable stages in certain directions at least. If the mortality among students of politics is high because of the ravages of university administration and politics, there is all the more reason for husbanding carefully our resources, and making the most effective use of them. And if the endowment of political research is more difficult because it must compete with other objects touching less closely, or seeming to, the nerves of the social and political order, there is all the more reason for explicit statement of definite plans and for continued pursuit of the means to carry them out under public or private auspices;.

These suggestions are offered in conclusion:

1. More adequate equipment for collection and analysis of political material;
2. More adequate organization of the political prudence of our profession;
3. The broader use of the instruments of social observation in statistics, and of the analytical technique and results of psychology; and closer regard to and relations with the disciplines of geography, ethnology, biology, sociology and social psychology.

4. More adequate organization of our technical research, and its coördination with other and closely allied fields of inquiry.

Quite properly a bill of particulars might be called for, but this paper is only in the nature of a declaration, and specific statements are the next step in the case. What has been said is wholly vain unless it has been understood to emphasize above everything else the crying need for organization and coördination of effort both in general method and with specific reference to the activities of our professional societies.

Science is a great coöperative enterprise in which many intelligences must labor together. There must always be wide scope for the spontaneous and unregimented activity of the individual, but the success of the expedition is conditioned upon some general plan of organization. Least of all can there be anarchy in social science, or chaos in the theory of political order.

THE TECHNIQUE OF THE PLURALISTIC STATE

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What is the pluralistic theory of the state? Roughly speaking, we may identify the pluralistic theory as that theory which denies the logical validity and the practical and moral adequacy of the traditional doctrine of state sovereignty, or of the doctrines of sovereignty which have prevailed since the eras of Bodin and Hobbes, and have in a peculiar degree dominated political thought since the time of John Austin. Although the pluralist dogma does not take precisely the same form for all of its adherents, views held in common by them all are to be found in the chief criticisms which they offer against what they regard as the now prevailing notions of state authority and competence. The pluralists maintain that sovereignty is not, in any community, indivisible, and they deny that the state either is or ought to be sovereign in any absolute or unique sense. They cite many facts of recent political and social experience to discredit the belief that the state does persistently exercise sovereignty over other essential social groups; they argue that the tendency of social and industrial change today is in the direction of a progressive weakening and narrowing of state power; and they hold that the effect of a still further disintegration and decentralization of authority will be to improve the economic, moral and intellectual well-being of man and society.¹

We can not here explore at length the genesis of current pluralistic doctrines. Briefly, they appear to be in part the

¹ An excellent analysis of recent pluralistic theory is that contained in the sympathetic, though at some points adverse, criticism by Miss M. P. Follet, in chapters 28-32 of her volume *The New State* (New York, 1918). The article by Miss E. D. Ellis, on "The Pluralistic State" (*American Political Science Review*, August, 1920, pp. 393-407) presents another useful exposition and criticism of the doctrine.

culmination of a trend in legal theory—chiefly from Germany and England—confirmed and modified by a later and somewhat parallel trend in economic doctrine—chiefly from France. The latter movement, in economic doctrine, is to be sketched later in this article under the heading, “Syndicalism.” In the former field we have the theory of the real personality of corporate associations within the state. The German jurist, Otto Gierke, writing about half a century ago, developed not only the historical aspects of this conception, but maintained that correct political theory requires that we regard the personality of certain essential corporate associations not as artificial or fictitious, as a mark to be granted or withheld by a sovereign state, but as real and natural, inhering in such associations and evolving independently of, and prior to, state action.² In England this view was developed by F. W. Maitland, who in similar terms insisted upon the “real personality, the spontaneous origin, the inherent rights of corporate bodies within the State.”³ Still later Dr. J. Neville Figgis, although his practical interest has been primarily in the rights of ecclesiastical groups, has maintained the rights of associations generally against the prevailing creed of state omnipotence.⁴ The writings of Figgis present, perhaps more effectively than any other writings, the doctrine that the smaller communities and lesser associations within the state possess a corporate life arising naturally and inevitably from the associational instincts of mankind; and his writings eloquently oppose the efforts of statesmen and lawyers to invade the proper spheres of these associations and to prevent their development according to their inherent spirit and tendency. He opposes the notion which regards the state and the individual as the only political entities, and divides activities into public—those of the state—and private—those of individuals and associations—and he

² The views of Gierke appear in his *Das Genossenschaftsrecht* (1868) and his *Die Genossenschaftstheorie* (1887).

³ Maitland's views are found in his introduction to his translation of Gierke's *Political Theories of the Middle Ages* (Cambridge, 1900: a translation of a section of the *Genossenschaftsrecht*) and in various passages in his *Collected Papers*.

⁴ For Figgis' view see especially his *Churches in the Modern State*. (London and New York, 1913).

maintains that the collective activities of individuals, through such organizations as churches and trade unions, partake more of the nature of public than of private activities. He characterizes the state as "an ascending hierarchy of groups, family, school, county, union, church, etc., etc."⁵

The ideas of Gierke, Maitland, and Figgis supply the starting-point for the pluralistic theory. But their own doctrines are not fundamentally pluralistic. The state is not by them represented as one among a number of equal or coördinate associations. They recognize the distinctive function and superior authority of the state as an agency of coördination and adjustment. The state is the "*communitas communitatum*." According to Figgis, one of the chief elements in the importance of the various smaller groups is that they foster not only individual development but also "loyalty to the great 'society of societies' which we call the State."⁶ Each of these groups must by the state be restrained from acts of injustice towards one another or towards individuals; and "it is largely to regulate such groups and to ensure that they do not outstep the bounds of justice that the coercive force of the State exists."⁷ Such views should be characterized as doctrines of political federalism rather than of political pluralism. But the influence of such views upon the ideas of the pluralists is unmistakable, and the connection is insisted upon by the pluralists. As leading representatives of the latter we may take Léon Duguit in France and Harold J. Laski for this country and England. Their views have been so frequently reviewed that no elaborate analysis of the more formal aspects of their systems is now necessary.

The state, according to Duguit,⁸ is not sovereign, because it is subject to limitations; and these limitations are not merely

⁵ Figgis, *Churches in the Modern State*, p. 87.

⁶ *Ibid.*, p. 49.

⁷ *Ibid.*

⁸ The pluralistic theory of Duguit is set forth in parts of almost all of his works. See especially his *Manuel du Droit Constitutionnel* (2nd ed., 1911), and his *Transformations du Droit Public* (1913). The latter work has been translated by Frida and Harold Laski, under the title *Law in the Modern State* (New York, 1919); this translation is marred by numerous errors in rendition.

moral limitations. The state is subject to law (*droit*). Law is not the creation of the state; it is superior to and anterior to the state. The basis of law is social solidarity or social interdependence; by virtue of the fact that men have common needs whose satisfaction can not be assured except by social life, and different aptitudes which can supply such needs only by a reciprocal exchange of services, men in society are subject to certain rules of conduct. These rules embody a general obligation to do nothing which weakens social solidarity and to do everything which tends to realize and develop social solidarity.⁹ Expressed more concretely, the state is subject to definite obligations of a legal, or jural (*juridique*) sort. For law is merely an expression of the demands of social opinion, to formulate and enforce such demands being the special task of the state. The state is subject to legal limitation because social opinion does as a clear matter of fact demand that certain tasks be accomplished by the state, that certain public services be organized in such way as to avoid all dislocation.¹⁰

Moreover, Duguit maintains that there is no such thing as a national will and no such thing as a single sovereign organization expressing and executing the decisions of a supposed national will. He admits that the earlier typical functions of the state were such as perhaps required for their due fulfillment the notion of a supreme power issuing commands and exerting only coercion to enforce its commands; political functions were primarily those of justice, police, and defence. But the business of the state today goes far beyond the provision of such services; government is now called upon to perform a variety of activities necessary to the development of individual well-being; and in fulfilling these newer tasks—many of them of an industrial character—government's most important acts are no longer essentially related to the power to command and coerce, which is the distinctive quality of sovereignty. As the characteristic attribute of the state today, the idea of public service must replace the idea of sovereignty. Whatever power the state may legiti-

⁹ Duguit, *Manuel du Droit Constitutionnel*, pp. 49-51, 69-79.

¹⁰ Duguit, *Transformations du Droit Public*, chs. 1-3.

mately exert, it possesses only by virtue of the relation of such power to the provision of public services in response to social needs; the acts of those who govern create no obligation and have no legal validity save as they contribute to such an end.¹¹ Those who govern are "simply managers of the nation's business."¹² Thus no organ of the state is sovereign, and the imposition of restraint is not the typical means whereby the state secures its ends.

Laski's main criticisms are directed against two alleged principles of the prevailing theory of state sovereignty: first, that the power of the state over individuals or smaller social groups is actually absolute, and, secondly, that the state is morally entitled to its assumed position of preëminence in society.¹³ In Laski's attack he thus, in the first place, shows, with great ease, that there is never in any community any one source of authority which is certain of unvarying obedience. There are always things which the state does not do, and can not do, because of opposition from the conscience or will of some part of the community. In the second place, the state has, as compared with other social groups, no superior claim to the individual's allegiance. "The state is only one among many forms of human association."¹⁴ A church or trade union may properly be of fully as much practical and moral importance to an individual, and as much "in harmony with the end of society," as the state is. The state should recognize this; it is not morally justified in trying to impose by force its special demands when there is conflict between its objects and those of other organizations within the community. In case of such conflicting demands the state should seek only to win allegiance by reason and moral suasion—not by physical compulsion. Its preëminence over other associations in any occasion of conflict depends solely upon its superior claim in that particular instance.

¹¹ Duguit, *Transformations du Droit Public*, introduction and ch. 2.

¹² Duguit, *Law in the Modern State*. p. 51.

¹³ Laski's general theory is found chiefly in his *Problem of Sovereignty* (New Haven, 1917), especially chapter 1 and appendix A, and his *Authority in the Modern State* (New Haven, 1919), especially chapter 1.

¹⁴ Laski, *Authority in the Modern State*, p. 65.

Laski thus, unlike Duguit, hardly concerns himself at all with the question of the legal power of the state. He does not consider it worth while to assail the state's claim to legal sovereignty. He seeks to disparage state importance in this matter not by denying legal sovereignty but by asserting its unimportance; the concept of legal sovereignty is, he holds, a "barren concept;" merely legal sovereignty is "without practical utility."¹⁵

How do Duguit and Laski show the actual working of the pluralistic theory? What are the evidences which they offer to prove that within any community there is no single organization of supreme authority, and that state power is now a variously limited power?

For the most part Duguit finds his evidences within the field of governmental action, although they are greatly varied here. He does not primarily desire to emphasize the significance and dignity of nonpolitical social groups; his main effort is to show first, that the making of statutory law (*loi*) is not the exclusive prerogative of any one organ in the state, and secondly, that each organ of state action is a legally limited agent or, because it logically should be, is in the way of becoming such. His evidences, chiefly from the operation of the French governmental system, are presented under three main heads: (1) the nature and origin of the statutes (*lois*) of the state, (2) the judicial limitations upon administrative action, (3) the developing recognition of the principle of state responsibility.¹⁶ Concerning statutes, he maintains that the obligation to obey statutes and the right to enforce them rest not upon their supposed sovereign origin, but upon the fact that the statutes embody rules which are the formal expression of social facts; in other words, statutory laws are obligatory in character not because of their sovereign origin but because of the objective ends which they serve. To prove this he shows that in France agencies other than Parliament issue general commands accepted by the court as legally valid if directed towards legally valid ends. He cites such examples as the following: the power of the President of the

¹⁵ Laski, *Problem of Sovereignty*, p. 269.

¹⁶ Duguit, *Transformations du Droit Public*, chs. 3-7.

Republic to issue independent ordinances, unrelated to the execution of statutes passed by Parliament; the power of communal authorities to issue local ordinances sustained by penal sanctions; the power of local administrative authorities to enter into statutory agreements (*lois-conventions*), of a noncontractual character, with utility companies; the power of civil servants in some governmental departments and institutions to participate in the general direction and control of the respective departments or institutions.

Duguit's examples of judicial limitation on administrative discretion are so obvious and unimportant that we are not justified in analyzing them here. The same can be said of his demonstration of the development of state responsibility, where he cites judicial decisions holding administrative officials personally liable for injurious acts done out of relation to the duties of their respective offices; or points to instances of the acceptance by the state itself of liability for injurious acts of its administrative agents done within their competence and done without fault; or, finally, points to a tendency on the part of the Council of State to declare, and on the part of Parliament to acknowledge, the existence of a responsibility of Parliament in cases where injury is suffered by private parties from acts of Parliament placing restrictions, in the interest of the public, upon private activities not in themselves noxious.

It is difficult to perceive relevancy or force in the instances described by Duguit to demonstrate the actual working in France of his pluralistic hypothesis. In the first place, most of his examples of legally limited authority relate to obviously subordinate governmental agents exercising delegated powers. In the second place, where reference is made to legal obligations resting upon higher authorities more immediately representative of the state, he indicates no means of defining or enforcing such obligations; indeed he acknowledges that there is, in most cases, no method for compelling even inferior officials to conform to decisions of the Council of State nullifying their acts on the ground of *ultra vires* or abuse of power. Finally, throughout all his discussion he disregards any distinction between state

and government; and even if he be not held strictly to a discrimination between these two terms, yet he generally admits that the notion of the limitedness and responsibility of Parliament (an organ of government) is not an ideal that has as yet in any clear way received formal recognition.¹⁷

The instances discussed by Laski to prove his contention that the source of ultimate control in society is plural, not single, are drawn from a somewhat more varied field. In his *Problem of Sovereignty*, his reference, for evidence, is mainly to three great religious movements in Great Britain in the nineteenth century, each of them arising from the efforts of a strong religious group within the nation to assert against the state's opposition its claim to the right of self-control, free from interference by the tribunals of the state, and each conflict resulting in a victory for the religious organization—that is, in the acknowledgment by the state that such corporations are, in their respective spheres, autonomous groups within the nation. At various points in this work as well as in his later volumes and shorter essays, Laski refers more widely to frequent instances of actual state impotence against resisting groups, or even resisting individuals, within the nation, as proofs that the idea of the sovereign state is an untenable and futile doctrine. In what practical sense, he says, in effect, can the British Parliament be said to be sovereign when it dared not attempt to enforce the antistrike provision of the munitions act against the defiant Welsh miners? or if Ulster could, in 1914, refuse, with impunity, to accept the sovereignty of an act of Parliament granting home rule to Ireland? or if many individuals successfully refused to obey the military service act of 1916? Of what validity or importance

¹⁷ Some of the difficulties in Duguit's discussion may be due to the varying meanings and connotations of the French term, "*droit*" and the English "law." Where he urges the existence of a "*regle de droit*" superior to the state, he apparently means something more than a moral principle; but it is not clear that he means an officially declared "rule of law," as is implied in Dicey's well known phrase. If "*regle de droit*" is translated as "rule of justice," the ambiguity of the French phrase may be indicated; and the same problem will arise whether such a standard can be something more than a moral principle without being identified with the law officially declared by the organs of the state. [Ed.]

is a doctrine which attributes sovereignty to an authority which is compelled by groups other than itself to adopt policies to which it is opposed, or which may even find it necessary to respect the consciences and prejudices of unorganized individuals?

My own first response to Laski's argument would be that, so far as I know, there has never been any political philosopher of any school in any era who would attempt to deny such facts as those adduced by Laski relating to the actual limits to state power, or who, I believe, would be much disturbed by such facts. And certainly extremely few have been the theorists or statesmen who have not acknowledged that there were moral or rational, as well as actual, physical limits to state competence. Take such typical exponents of the traditional sovereignty theory as Bodin, Grotius, and Bentham; each of them recognizes the moral limits of state authority. And Hobbes, whom Laski calls "that prince of monistic thinkers"¹⁸ points out that there are certain demands upon the subject that the legal and political sovereign can not rationally make because the subject can not rationally be supposed to have surrendered the rights of self-determination in such matters. John Austin, whom also pluralists put forward as a representative *par excellence* of the monists, defines the sovereign only as the "determinate human superior" who receives "*habitual*" (not necessarily invariable) obedience from the "*bulk*" (not necessarily from every particular unit) of a given society; and he devotes several pages in his compact discussion of sovereignty to an analysis of "the limits of sovereign power."¹⁹ Finally, let me quote the following two statements of Laski's views:

"In almost every independent political society, there are principles or maxims expressly adopted or tacitly accepted by the sovereign, and which the sovereign habitually observes. The cause of this observance commonly lies in the regard which is entertained for those principles or maxims by the bulk or most influential part of the community; or it may be that those principles or maxims have been adopted from a perception of

¹⁸ Laski, *Problem of Sovereignty*, p. 25.

¹⁹ Austin, *Lectures on Jurisprudence*, I, secs. 190, 254ff.

utility or from a belief of their conformity to the Divine will." And, speaking of any part of any government:

"Like the sovereign body of which it is a member, it is obliged or restrained morally; by opinions and sentiments current in the given community."

These two statements embodying Laski's view are not from Laski but from Austin's *Jurisprudence*.²⁰ And who but such rare publicists as Blackstone and Treitschke have sought to exalt state importance in any such degree as Laski at times conceives nonpluralists generally to do?

In attempting this brief illustration of contemporary pluralistic theory it has seemed proper to devote chief attention to Duguit and Laski, both because they are probably the best-known exponents of the doctrine and because they are the most emphatic in asserting the fundamental divergence of their doctrine from the monistic theory. But we have not put an end to the matter of political pluralism versus political monism by showing that Duguit and Laski have probably misunderstood both the meaning and the practical and moral implications of the prevailing doctrine of sovereignty, or by arguing that the evidences which they assemble to support their theoretical assaults are not relevant or effective. For, in the first place, there are other authors who, though they set forth doctrines having, in main points, the same practical tendency as the notions of Duguit and Laski, are yet perhaps clearer and more discriminating in the explanations of the relations of their doctrines to the monistic theory.

Several writers in Europe and America have set forth systems which, though they do not assail the theoretical foundation of state sovereignty, are yet pluralistic in political aspect in that they point to, or call for, a greater diversification, in the organization for the initiation and execution of state policy, than the prevailing theory is ordinarily taken to imply. For example, in France, Maurice Hauriou attempts in his constitutional treatises²¹

²⁰ Austin, *Lectures on Jurisprudence*, I, secs. 248 and 254.

²¹ Hauriou, *Principles of Droit Public* (2nd ed., 1916), pp. 32ff. Cf. also Berthélemy, "Le Fondement de l'Autorité Politique," *Revue du Droit Public*, Vol. 32 (1915), pp. 662-682.

to differentiate between political sovereignty, residing in the agencies of government—including, in democracies, the electorate—and juridical sovereignty, residing in the people generally and manifested, in general, through their power of accepting or refusing to accept voluntarily or of refusing to coöperate actively in the execution of governmental commands which they consider unjust, and, in particular, through the indispensable coöperation by the people in the enforcement of criminal law, as through the jury system. In this country Miss M. P. Follet has directed attention to the increasing importance of group life; and she advocates a policy which, though leaving ultimate state sovereignty undisturbed, would accept and encourage the active political functioning of various groups, such as trade unions, professional associations, and neighborhood societies. Various sociologists, notably Durkheim, have criticized the existing political structure on the ground of its inadaptability and inadequacy as the exclusive regulative factor in the complex industrial society of today. They would create a new, more flexible organization, which, however, they would not substitute for, but rather add to, or insert into, the state; industrial control would then be divided between the state and the new organization constructed on an occupational basis, the state to remain as the supervising and ultimately sovereign authority.²²

In the second place, besides these various theoretical systems, there are attacks of a practical sort, which are pluralistic in tendency in that they champion the causes of social groups within the community in conflicts between these groups and state authority, or in that they seek to distribute political control among various interests, or strive in other ways to create a more decentralized system for the application of political authority. There are various contemporary movements which, in France and England, at least, are supported by men and groups of impressive strength and vision, and whose purposes are to make substantial modifications in the existing geographi-

²² See Barnes, "Durkheim's Contribution to the Reconstruction of Political Theory," *Political Science Quarterly*, June, 1920, pp. 236-254.

cally organized, hierarchically articulated political structure; modifications which would make political control more diffuse by creating more manifold bases of political representation, or which would make social control more diffuse by withdrawing altogether from state control certain fields of social action now claimed by most states to be within their competence. These movements have historical and theoretical relations that we can not consider here. We may sketch briefly certain contemporary projects for reform that illustrate the tendencies just described, and only to indicate the relations of such projects to the doctrine of state sovereignty, not to appraise their practical or moral value. For this purpose we can consider very briefly the following: the movements for (1) professional representation, or the representation of interests; (2) administrative democracy or administrative syndicalism; (3) regionalism and distributivism; (4) guild socialism; (5) syndicalism. The order in which we consider them is determined roughly by the degree to which they tend to a real division of ultimate political control, proceeding from the less to the more pluralistic. At least, the last two aim at a more radical dislocation of the existing system of control than do the first three.

Regionalism and Distributivism. Certain movements of reaction against the all-absorbing centralized state are in the direction of a greater localization of political and economic control; in agreement with other critics of the existing politico-economic structure, they seek a broader distribution of political and economic control; but they seek this in a territorial, rather than in a functional, division. Here we have the regionalist school in France and the distributivist school in England.

The regionalist movement in France comprises various projects for the redefinition of existing areas in order to make them logical units of social feeling and economic life, and for the devolution of many existing government functions to these reconstructed local areas. Their aim is to preserve popular self-government against the encroachments of remote, unrepresentative, overwhelming governmental authority, not by restricting the functions of government generally, but by narrowing the

territorial areas in which government normally acts. Their remedy is offered as a cure for the extravagance, confusion, irresponsibility, and generally undemocratic character of the present highly centralized system of French administration.

For a century there have been efforts to enlarge the scope of powers of the existing local agencies—particularly the departmental general council and the communal council. For over half a century schemes for a more comprehensive and radical reorganization and territorial decentralization of the administrative system have been earnestly advocated and have been supported by distinguished authors of various political schools—including Ducroq, Casimir-Perier, Jules Favre, Paul Deschanel, and Ribot. The movement has given origin to numerous organizations. The present regionalist movement may be said to have been officially launched at the Congress of Nancy in 1865. This was followed by many other conferences and organizations culminating in the formation, in 1900, of the French Regionalist Federation. This was followed in 1913 by the League of Professional Representation and Regionalist Action, under the leadership of Jean Hennessy—president of the league, leader of the movement in the Chamber of Deputies, and author of several works describing the movement. The plan of this league calls for the creation of new areas larger than the present *departements*; the governing body in each area would be composed of representatives elected by professional and economic groups within the area, and upon it would devolve the autonomous exercise of many administrative and subsidiary legislative functions now under the active control of the central government.²³

The dogmas of the British distributivists, headed by Hilaire Belloc, have more of an economic color. They are two—individual ownership of property, and voluntary coöperation in small community areas rather than on broader district or national lines.

²³ For description and discussion of the regionalist movement, consult the following: Charles Brun, *Le Régionalisme* (1911); Jean Hennessy, *Regions de France: 1911-16* (Paris, 1916), and *Reorganization Administrative de la France* (1919); Raymond Leslie Buell, *Contemporary French Politics* (New York and London, 1920), ch. 12.

The only adequate guarantee of political and social freedom is, they hold, individual ownership; the only way to prevent a narrow concentration of economic—and therefore of political—control, is a system of small self-governing communities of individual property owners, each individual making his contribution of labor and produce to the community on the basis not of status or compulsion but of free contract. According to Belloc,²⁴ this is the system which, in the later middle ages in western Europe, was, under the influence of the Catholic Church, gradually developing in place of the pagan servile state, in which those who labored worked under compulsion of the law or of their slave status. In that medieval system the villa and the guild were the fundamental units of production and of social and political life; in each “production was regulated by self-governing corporations of small owners.”²⁵ From the tenth to the sixteenth century there was a gradual loss, by the workers of the villa, of their original servile character; and there was a gradual development of what was in effect freehold or absolute possession of the soil. In the towns the craft and trading guilds jealously safeguarded “the division of property, so that there should be found within their ranks no proletariat upon the one side, and no monopolizing capitalist upon the other.”²⁶ This ideal condition of society was, in the non-Catholic countries at any rate, supplanted by a society based on capitalism, which is an unstable system because it conflicts with “all existing or possible systems of law” and because of its intolerable effects in “denying sufficiency and security” to most men. There are only two means of escape from this unstable and intolerable system: first, “the *Collectivist State*,” which, through its efforts to establish state-guaranteed sufficiency and security, will really establish another form of the servile state; and, second, “a reaction towards a condition of well-divided property or the *Distributive State*.”²⁷

Professional Representation. The idea of the representation of interests—the idea that economic, professional, or social

²⁴ Belloc, *The Servile State* (London, 1912).

²⁵ *Ibid.*, p. 52.

²⁶ *Ibid.*, p. 49.

²⁷ *Ibid.*, pp. 5–6.

groups are the logical things to be represented in government—is as old as Plato; it had, in the nineteenth century, such distinguished advocates as Burke, Hegel, and Mill, and, more recently, has been supported by certain well-known French publicists—notably, Duguit, Charles Benoist, and Maxime Leroy—and by sociologists from various countries, including Gumplowicz, Durkheim, and Ratzenhofer. The proponents of this idea argue that our present system of representation is based on the fallacious assumption that the common interests of citizens are their community interests, that economic and social needs and opinions vary primarily as we pass from region to region, and that, therefore, the just and logical plan of representation is the territorial system. They maintain that the present system is nonrepresentative and misrepresentative of the interests and views of the people. A territorial region, they hold, is never identified with a particular interest or opinion; each district is the habitation of groups of such various, conflicting economic and social needs and views that no clear mandate for the supposed representative can be fused out of them; so that what is really represented is simply one or few of the stronger among the numerous minority groups—producers, consumers, farmers, laborers, employers, employees, landlords, tenants.

The question of professional representation has been actively agitated in France during the last few decades, and numerous schemes have been devised by various organizations, some of which schemes have been embodied in bills introduced in Parliament. The plan of representation proposed by the League of Professional Representation and Regionalist Action for the governing body of the new regions proposed by it provides for the division of voters in each region into five classes—namely, agriculturists, merchants, manufacturers, liberal professions, and government employees.²⁸

²⁸ For discussion of French theories and projects of professional representation, see the following works: Benoist, *L'Organisation de la Démocratie* (1900) and *Pour la Reforme Electorale* (1908); Leroy, *Pour Gouverner* (1918), chs. 2, 9, 14–20; Lysis (pseudonym for Eugène le Tailleur), *Vers la Démocratie Nouvelle* (1917), ch. 7; Duguit, *Manuel du Droit Constitutionnel* (1918), pp. 176–179, and *Traité de Droit Constitutionnel* (1911), I, pp. 391–392; Buell, *Contemporary French Politics*, pp. 358–372; “La Représentation des Intérêts à la Chambre,” *Revue Bleue*, series 5, Vol. V (1906), pp. 703–704.

Administrative Syndicalism. Administrative syndicalism relates to a new location of control within the departments which administer the various governmental services. The administrative structure of present-day governments is on the whole the result of adaptations to exigencies quite other than those created by the newer types of activity assumed by modern governments during the last century or so. That structure is determined chiefly by the effort to make the action of government just or effective in performing its older, typical functions—military, diplomatic, judicial, police. Generally these governments have entirely overlooked any need to recognize the peculiar interests of the persons who actually create the services purveyed or contributed by government to the community, and have neglected to increase expertness and initiative in administration by enlarging the power and responsibility of such persons. With the steadily expanding nationalization and municipalization of various social and economic services, governments have done little or nothing in the way of developing a new structure by which each group of public servants could exercise their proper part in the control of the respective services. We do find scattered instances of a limited participation in administrative direction accorded to civil officials. But in all such cases the powers of the boards created for such joint control are narrowly defined, being generally restricted to matters of discipline and promotion, and in all the civil servants have only a minority voice.²⁹

In the absence of provision, within the governmental structure itself, of opportunities for self-expression and responsibility on the part of governmental employees, it is natural—especially in view of the enlarged opportunities of self-expression which employees in private industry have acquired—that during the last few decades public employees have in many instances created for themselves organs of collective expression. We can not

²⁹ For examples of such boards, cf. "State and Municipal Enterprises," special supplement to the *New Statesman*, May 8, 1915, pp. 24–25; Thureau, "Les Délégués élus du personnel des chemins de fer en France et en Allemagne," *Revue Politique et Parlementaire*, Vol. 73 (1912), pp. 454–481; *New Zealand Year-book*, 1914, p. 496; *ibid.*, 1916, pp. 17–19.

here indicate the evolution and present scope of the movement for the unionization of public servants, except to mention that the movement has made rapid progress, against persistent governmental opposition; that in Great Britain and France, for example, the national civil services are almost completely unionized and the local services extensively unionized; that considerable progress has been made in the unionization of national and local services in many other countries—including the United States; and that some headway has been made in forcing political and administrative heads to recognize and deal directly and officially with such unions.³⁰

The movement for unionization in the public service has doubtless been primarily an economic movement, the chief objects of unionization being to secure better terms as to wages, hours, and other conditions of work. But the desire of public employees for responsibility and self-expression in their work has been a potent motive also. Moreover, administrative reformers have been glad to utilize the movement as a means of promoting their plans to increase expertness in administration by giving to civil servants definite shares in controlling or influencing the policies of their respective departments. During the latter half of the World War and since the war new projects, some of them issuing from public sources, have been devised for participation by public employees in the administration of their respective services; and some of the projects have been in

³⁰ Except for France we have only scattered and piecemeal accounts of the recent evolution of unionization in the civil service. For England, see Moses, *The Civil Service in Great Britain* (*Columbia University Studies in History, Economics and Politics*, VII, 1912), pp. 200-211; Hemmeon, *The History of the British P. O.* (*Harvard Economic Studies*, VII, 1912), pp. 79-88; Report of the Royal Commission of the Civil Service; Third Report (*Parliamentary Papers*, 1913, Vol. 18), and Fourth Report (*ibid.*, 1914, Vol. 16). For France there are numerous compendious studies; see especially Lefas, *L'État et ses Fonctionnaires* (1913); Harnignie, *L'État et ses Agents; Étude sur le Syndicalisme Administratif*, (1911); Leroy, *Syndicats et Services Publics* (1909); Laurin, *Les Instituteurs et le Syndicalisme* (1908); Paul-Boncour, *Les Syndicats de Fonctionnaires* (1906). For other countries see Holcombe, *Public Ownership of Telephones on the Continent of Europe*, (1911), chs. 11, 14; Fourth Report of Royal Commission of Civil Service (*Parliamentary Papers*, 1914, Vol. 16), appendix, pp. 161ff.

temporary or tentative operation. In this country during the war the ordnance bureau of the war department established joint advisory boards, in several of the arsenals, for questions of industrial administration. In England we have the government's plan for applying the Whitley scheme of joint standing councils in the public service, the official plan of the Sankey commission for miners' participation in the administration of the coal-mining industry with national ownership of the coal royalties, and the government's bill to establish a national representative council for the English police. The application of the Whitley system to the public service in England involves the establishment in various departments of boards jointly representative of the employees and the ministerial head; but so far the government has been willing to concede only advisory powers to these boards. The civil service organizations have demanded that the boards should have full executive powers, and they have also demanded for the employees an equal, though not a majority, representation on the boards. Some projects of administrative reform in France go so far as to urge that the working officials in the public service should be endowed with real responsibility through the power of initiative and administrative direction in the work of their respective departments, and that they should be made administratively independent of governmental interference, leaving to the ministerial heads only the power of keeping the officials within the law. Such is the object of the *Ligue des gouvernés* headed by Maxime Leroy and formed in 1919.³¹ The French government has in recent months put forth proposals for a greater recognition of, and coöperation with, the syndicates in the public service.³²

Guild Socialism. None of the movements which we have just sketched makes any direct attack upon the ultimately indivisible, legally absolute, sovereignty of the state. They are, however, properly considered in a study of political pluralism; for, in the first place, they for the most part reflect the same kind of aversion to the centralized, hierarchically organized state

³¹ See Buell, *Contemporary French Politics*, pp. 348-349.

³² See *Revue du Droit Public*, April-May-June, 1920, pp. 314-324.

that the theorists of pluralism manifest; secondly the movements in question are commonly referred to by such theorists as illustrations of the practical working of their doctrines; finally such movements do actually tend towards a greater diversification of political and administrative control than we now have. The purposes of most guild socialists go further, look to a more fundamental division of social control, and are more nearly in full harmony with the pluralists' notion of a state brought down to the level of other social organizations.

The guild-socialist, or "national guilds," movement is chiefly a British movement, and may roughly be said to have been initiated about fifteen years ago, its doctrines receiving their earliest systematic statement in the writings of A. J. Penty³³ and A. R. Orage.³⁴ The propaganda has been carried on chiefly through the *New Age*, now edited by Orage and S. G. Hobson, and the numerous books and articles by the three writers just mentioned and G. D. H. Cole, R. H. Tawney, and others.³⁵ The programs of guild socialism, although economic programs, yet require a fundamental reconstruction of political organization. Guild socialism might be called pluralistic socialism. Its aim is not to enlarge, but rather to restrict, the functions of the political state, however democratized the state may be made to be. It regards orthodox socialism and collectivism as simply newer forms of politicalism, against which in all its forms guild socialists protest because it makes the state supreme above other social groupings. The guild socialists do not regard state social-

³³ Penty, *The Restoration of the Guilds System* (London, 1906).

³⁴ Orage, "Politics for Craftsmen," *Contemporary Review*, Vol. 91 (1907), pp. 782-794.

³⁵ On the evolution of the movement in Great Britain, see Cole, "The National Guilds Movement in Great Britain," in *Monthly Labor Review*, (U. S. Bureau of Labor Statistics, IX, July, 1919), pp. 24-32. For the principles of guild socialism, see the following more important books: Hobson, *Guild Principles in War and Peace* (London, 1917) and *National Guilds and the State* (London and New York, 1920); Orage (ed.), *National Guilds: an Inquiry into the Wage System and the Way Out* (London, 1914); Cole, *Self-Government in Industry* (London, 1918, and *Social Theory* (New York, 1920); Reckitt and Beckhofer, *The Meaning of National Guilds* (New York, 1918); Bertrand Russell, *Political Ideals* (New York, 1917), and *Proposed Roads to Freedom* (New York, 1919).

ism as promotive of economic freedom and democracy. For they hold that under that system the men working in any given industry have no more part in the control of their industrial life than they would if working under private ownership; because the administration of the industry, under state socialism, is still in the hands of officials whose bias and associations separate them from the actual workers. In any given state-operated industry under a collectivist system the workers are under the control of an electorate most of whom have no direct or vital interest in the questions peculiar to that industry. The guild socialist denies that the state is the community or that it may properly exercise the greater part of the community's power; and he maintains that there are many forms of common action in which the state has no proper part. The state, as a territorial association, is fit to deal with matters which affect all citizens equally and in the same way; but it is not qualified, by its structure or mode of action, to deal with matters which affect different groups of citizens in different ways. Guild socialists regard neither the territorial nor the professional grouping in society as by itself adequate. "Certain common requirements are best fulfilled by the former and certain others by the latter;" neither should be "completely and universally sovereign."³⁶

The several groups of guild socialists are united, on the one hand, in the notion that the state must be deprived of control over production generally and, on the other hand, in the notion that the state must remain—at least until some far-off future—as an indispensable institution of society. But in their more detailed description of the sphere of the state—particularly in relation to industrial affairs—they differ in some essential points. Perhaps the prevailing opinion as to state functions is that held by the group headed by G. D. H. Cole. With this group the ideal system is a system of democratically organized associations of workers controlling industry in coöperation with a democratized state. They would have a national body, representative of all the guilds—a guild congress, holding the same relation to the citizens as producers that the national political parliament occupies in

³⁶ Cole, *Self-Government in Industry*, pp. 85-89.

relation to the citizens as consumers. The effort is to harmonize the right of the consumer to control use and consumption with the right of the producer to control production. The guild organization, in order to satisfy the producer's just demand for responsibility and self-government, must control conditions of production; the state, to satisfy the consumer's just claim for an equitable division of the national produce and for full provision of the goods and services which he justly requires, should own the means of production and regulate the price of products and the distribution of income.

In addition to these economic functions, the state should, according to this school, continue to perform its purely political duties—in defining and regulating non-economic personal relations: that is, the control of marriage and divorce, the protection and education of children, the care of dependent and defective persons, the prevention and punishment of crime.³⁷

But Cole and his followers argue that the division of social authority is not merely between the national guild and the state. The individual should be allowed to distribute "his loyalties and obligations among a number of functional bodies."³⁸ There are other functional associations—religious, for example—of like importance. Society should be pluralistically organized on a functional basis—should be divided into a number of co-ordinate associations, each dealing with some essential aspect of associated life. But here the monistic evil reappears. For it is acknowledged that it is impossible to make such an exact definition of the respective functions of the various associations as to remove all opportunities for rivalry and conflict of interest and competence. There must, therefore, be a superior coördinating authority to adjudicate such conflicts. Such an authority can not be the state or any other one of the associations, but must be a joint body representative of all the essential functional associations.³⁹ This federal body is to deal only with matters common to all the associations or affecting more than one asso-

³⁷ Cole, *Social Theory*, pp. 86-87, 100-101; but compare page 137.

³⁸ *Ibid.*, p. 140.

³⁹ *Ibid.*, p. 134

ciation; and it is to act normally, not as a legislative or administrative authority, but rather as a court of appeal—as a deciding, not an initiating, body. It must possess supreme powers of coercion, maintaining ultimate control over “the whole paraphernalia of law and police.”⁴⁰

Despite this reappearance of the monist’s overlord, the goal of these reformers is still a pluralistic goal. The organization just described, by securing a logical and just distribution of individual rights and obligations, would, they hold, promote a gradual reduction in the occasions for coercion, and thus a gradual disappearance of the need for any supreme coercive authority. Thus these guild socialists, although denying sovereignty to the state only to attribute it to a new social institution, yet hold up as an ideal of the future the ultimate disappearance of sovereign authority of any sort.

With other guild socialists, typified by S. G. Hobson, no dual organization of industrial control is considered necessary. Consumers’ interests can be adequately represented within the guild system. The elimination of profits will remove profiteering and exploitation. What conflicts may arise within the organization of producers’ crafts can be adjusted through a state, stripped of power to command (in domestic affairs), but endowed with a “spiritual leadership” which will effectively harmonize these conflicts. The state’s intervention in industrial affairs should be exceptional, and determined, not by any supposed special consumers’ interests, but only by considerations of general, public interest. In the interpretation of “public policy” the state is apparently to be the ultimately final authority. Whether it is to be entitled to use force, as well as “spiritual” methods, as a means of intervention in the public interest, is not clear. In fact no guild socialist has made clear, to the present writer at least, any clear discrimination between political and other functions and methods. Cole in a way recognizes this failure by providing for a joint sovereign to supply this necessary discrimination. Hobson’s plan suggests, but does not fully explain, an ultimately divided social organization.

⁴⁰ Cole, *Social Theory*, p. 137.

The earlier efforts of the leading guild socialists were directed to the intellectual classes. Their propaganda has recently taken a more practical direction. The National Guilds League was formed in 1915, and a propaganda initiated among trade unionists. Mr. Frank H. Hodges, secretary of the Miners Federation, is a national guildsman; the mines nationalization bill, drafted recently by the federation, was built upon the principles of guild socialism, as are also recent projects prepared by the National Union of Railwaymen, the Railway Clerks Association, the National Union of Teachers, and various post office trade unions.

Syndicalism. Syndicalism, like guild socialism, represents a reaction from the politicalism of socialism and other systems which subordinate economic organization to political authority. Elements of the syndicalist theory have existed since the beginning of the socialist movement. In its recent and present form it is slightly earlier in origin than the recent movement of guild socialism. Syndicalism received its earliest development in France, where also it has attained its widest development.⁴¹ Its philosophic exposition is found chiefly in the writings of men not closely related to the practical syndicalist efforts: notably, in the writings of Georges Sorel, Eduard Berth, and Hubert Lagardelle.⁴²

As compared with guild socialism, syndicalism represents a substantial step further in the direction of pluralism in social authority.⁴³ The syndicalists would eliminate from society not only the capitalists, but the state also. They regard as inade-

⁴¹ On the history of the syndicalist movement in France, see Levine, *The Labor Movement in France: A Study in Revolutionary Syndicalism* (New York, 1912, *Columbia University Studies*, Vol. 46, No. 3); Cole, *The World of Labour* (London, 1913), chs. 3, 4.

⁴² Sorel, *L'Avenir Socialiste des Syndicats* (1897), *Le Décomposition du Marxisme* (2nd. ed. 1910), *Reflexions sur la Violence* (3rd ed. 1912), *Reflexions on Violence*, translated by Hulme (New York, 1914); Berth, *Les Nouveaux Aspects du Socialisme* (1908); Lagardelle, *Le Socialisme Ouvrier* (1911).

⁴³ For critical exposition of the syndicalist theory, see the following: Levine, cited in note 41, chs. 5, 6; Deschanel, *L'Organisation de la Démocratie* (1910), pp. 39-115; Russell, *Proposed Roads to Freedom: Socialism, Anarchism, and Syndicalism* (New York, 1919), ch. 3, and *passim*.

quate and unjust a system in which economic control is concentrated in the hands of any authority chosen on a basis of territorial representation. They regard the state as inevitably an instrument in the hands of the possessing classes, used by them to dominate and exploit the workers. They represent guild socialism as a system designed to protect, not the working proletariat, but the bourgeoisie, from domination by the state and by property owners. The syndicalist system provides for actually and completely self-determining industrial and professional groups, each absolutely free from any organized control. It is a clear and frank application of the pluralistic hypothesis.

The most important organization in which syndicalist ideas prevail is the *Confédération Générale du Travail*. This body adopted syndicalist doctrines soon after its foundation in 1895. Various events during the past two years have revealed some difference and uncertainty of opinion, within the organization, as to whether violent or pacific methods should be used to promote the practical realization of their ideals, as to the extent to which political reforms are proper objects for their present efforts, and as to the practical utility of the strike for political ends. Their recent program of proposed legislation for the control of industry is accompanied by propaganda whose terms, in certain parts (as to joint control, for example) may be intended to obscure the real significance of their program. But the details of the program are clear, for in each of the proposed joint boards the representatives of the workers outnumber the representatives of the public; so that the syndicalist ideal of economic federalism and workers' control would be realized by the adoption of the program.⁴⁴ Counterparts of the French general federation of labor are found in weaker organizations in England, America, and other countries; in England, for example, in the Industrial Syndicalist League, founded in 1920 under the leadership of Tom Mann; in the United States, chiefly in the Industrial Workers of the World, which, founded in Chicago in 1905, inherited aims of the Knights of Labor (organized in 1869) and

⁴⁴ See Allix, "Syndicalisme et Nationalisation," *Revue Politique et Parlementaire*, July, 1920, pp. 117-129.

merged several earlier organizations founded on an industrial (as distinguished from a craft) basis.⁴⁵ The organizations outside of France have generally developed neither numerically strong membership nor notably able leadership.⁴⁶

It is not within the scope of this article to discuss the extent to which any of the various projects sketched here are worthy of consideration as schemes to be put into operation in our political system; although it would obviously be worth while for political scientists to consider the movements in that aspect. Our interest here has been primarily in their relation to pluralistic theories of state sovereignty, with respect to which the following brief suggestions may be offered by way of summary.

⁴⁵ Among the numerous accounts of the history and policies of the "I. W. W." the following may be cited as among the more useful accounts: Paul F. Brissenden, *The Launching of the Industrial Workers of the World* (Berkeley, 1913, *University of California Publications in Economics*, IV, No. 1); Louis Levine, "Development of Syndicalism in the United States," *Political Science Quarterly*, Vol 28, (1913), 451-479; John Graham Brooks, *American Syndicalism: the I. W. W.* (New York, 1913); Vincent St. John, *The I. W. W.: Its History, Structure, and Methods* (Cleveland, 1913, and Chicago, 1917, I. W. W. Publishing Bureau); Carleton H. Parker, "The I. W. W.," *Atlantic Monthly*, Vol. 120 (1917), 651-662.

⁴⁶ *Joint Control in Private Industry*. Another practical movement which is in part decentralizing in tendency and which involves a recognition of group interests, is the movement for joint control (or workers' participation in control) in private industry. The movement may be regarded as a practical application of principles similar to those of the sociologists referred to above. There are a great many illustrations in the field both of practice and of proposals, and there are many familiar recent examples of a recognition by the state of the need for dealing with industrial problems through agencies representative of the organized groups immediately concerned. The working of some systems of compulsory arbitration is largely dependent (as in New Zealand and New South Wales) upon action of workers and employers in their respective organizations. And in England, the Whitley system of joint standing industrial councils in each industry to settle by periodic negotiation a wide range of questions in that industry, affords another example. The experiences of a number of these Whitley councils during the last two years proves them competent to deal intelligently with a variety of industrial questions and to reach conclusions acceptable to both sides and practically applicable. Similar schemes have been instituted in other European countries, and the tentative and partial steps in the same line in this country are familiar. There is a copious current literature on this general movement. See especially Sidney and Beatrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain* (London, 1920), and Arthur Gleason, "The New Constitutionalism in British Industry," *Survey*, Vol. 41 (1919), pp. 594-598.

A fundamentally pluralistic theory of state sovereignty seems neither necessary nor appropriate for any of the proposals referred to, except those of syndicalism and its closely kindred doctrines. The syndicalist programs can rest upon the syndicalist philosophy of Sorel and Lagardelle; other projects, upon the historical and analytical expositions of Gierke, Maitland, Figgis, Hauriou, Follet, and sociologists such as Durkheim; the views of none of these latter require any abandonment of the essential features of the conventional theory of state sovereignty. All that the monistic doctrine of sovereignty implies is: first, that normally within any given independent community there is and can well be only one system of institutions for the enactment and enforcement of civil laws—that is, commands which can be executed through the instrumentality of force, in the form of coercion directed against the body or property or individuals, physical restraint of the individual's goods or person, or the taking of the life of the individual; second, that the usual and appropriate name for the organization comprehending these institutions is the state; third, that within such organization there is a legal sovereign—that is, an organ, or group of legally cooperating organs, possessing ultimate legal control over other organs of the state, and, through these, over individuals and the non-political groups of the community, and not itself subject to legal control; fourth, that the state has practical and moral utility as an agency of unification and coördination among the manifold cooperative groups in society—in exercising its peculiar function of adjusting the relations of such groups to one another.

No paramount moral importance is claimed for this organization; no claim is made that the state, in its choice of activities to be brought under the sway of civil law, can ignore social opinion or individual conscience; or that the state should be considered competent “to range over the whole area of human life,” or to absorb “the whole loyalty of an individual,”⁴⁷ or that the state is under no moral obligation to regard the purposes of other essential associations. In some cases it may be morally right for an individual to obey commands which his conscience dis-

⁴⁷ Laški, *Authority in the Modern State*, pp. 45, 83.

approves; in other cases it may not be, whatever the author of the command—state, church, or trade union. Most monists perhaps believe that in states which endure and follow the general progress of civilization, the occasions for conflict between political and individual conscience tend to become relatively fewer, that such states are constantly readjusting their policies in order to remove discord between law and conscience, that the prevailing trend of political development is possibly in the general direction of a greater humanization of state policy. Such are about the only moral claims that an ordinary monist makes for the state. His political ethics on its positive, constructive, side should probably go further and demand that, where conflicts arise between the command of the state and that of other groups, the citizen should not consider himself to have fulfilled his duty by deciding which command it is right to obey in that instance; but that he should use his effort to change the policy manifested in the wrong command of the one so as to make it accord with the right policy of the other.

We should recognize the practical utility of consistent legal and political theory. So it seems a matter of practical importance that the fundamental constitutional implications of none of the interesting projects we have named should be misrepresented by loose or inexact theory. A movement to reinvigorate local institutions by enlarging their functions and increasing their administrative autonomy; proposals that recognize that government, because it is no longer a mere protection-affording, evil-suppressing authority, but also a giant serving, producing and purveying corporation, supplying various economic, cultural and social needs, must, therefore, in its nonpolice activities, divest itself somewhat of its iron disciplinarianism and wooden officialism; the notion that greater recognition must be given to interest groups both within and without government, and that a new organization of representation may be necessary in order to represent a larger number of legitimate interests; the view that the state, in reorganizing industrial control so as to create greater justice in distribution and broader opportunities of self-expression, should promote systems of joint control under state

auspices, rather than establish direct, centralized governmental control of industry: with respect to such views and proposals, any theory which gives basis to a notion that their adoption would mean any great disturbance of our idea that in any independent society there is a single organization of final legal control, or any theory which may give rise to a fear that the proposals are anarchistic in logical or practical tendency, does, in that respect, in theory, and therefore in practice, a disservice to the proposals.

Although this is the conclusion which the writer has to offer on the question of the relations of the pluralistic doctrines of Laski and Duguit to the practical movements which they claim as applications of their doctrines, yet it would be improper for him to close with such a presumptuous criticism of the two important authors in question. They have rendered a valuable service in fostering interest in the writings of other authors, such as those we have named above, and in the practical movements which appear to have a clearer theoretical basis in the works of those other authors. In general, the brilliant and interesting writings of Duguit and Laski have undoubtedly been of value in inducing us to think less about questions of sovereignty and more about questions of representation and government.

THE CONSTITUTIONAL CONVENTION OF MASSACHUSETTS

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The constitutional convention of Massachusetts which assembled in the city of Boston, June 6, 1917, and finally terminated its labors at a short session of two days in August, 1919, is the fourth body of this kind which the Old Bay State has had. The first convention was held in 1779 and 1780 in Cambridge and Boston, and formulated the constitution of 1780. This instrument, to which sixty-six amendments have been added, is the oldest written constitution now in force anywhere in the world. The second convention was held in 1820, and submitted a series of resolutions part of which were adopted and part rejected by the people. A third convention met in 1853 all of whose proposals were rejected. After an interval of sixty-four years, a fourth convention was called, which met in 1917 and again in 1918 and yet again in 1919. It submitted to the people twenty-two amendments and a revised draft of the constitution, all of which were accepted.

The convention was composed of 320 delegates. Of these 16 were elected at large, 4 were elected by each congressional district, and the remaining 240 were elected from the districts created for the purpose of choosing members of the state house of representatives. They were elected without party designations, but before the election took place, the lines between the friends and the opponents of the initiative and referendum were rather sharply drawn, and this served practically all the purposes

¹ The writer has incorporated in this paper portions of an address on "The Workings of the Massachusetts Constitutional Convention," delivered at the meeting of the American Library Association at Saratoga, N. Y., July, 1918, and printed in the Association's *Bulletin* for September, 1918.

of party organization and designation. In fact, this question dominated the whole of the first session of the convention and overshadowed other questions which were probably of greater importance.

Three months before the convention assembled, the governor appointed a "Commission to compile Information and Data for the Use of the Constitutional Convention," to which were assigned offices in the state house, which were kept open throughout the first two sessions of the convention and where at least one member of the commission could always be found. In considering how it could be of most use to the convention, the commission reasoned that as the convention was made up of busy men who had neither the time nor in many cases the necessary training for undertaking extensive research, it would be most helpful to issue a series of bulletins, each dealing with a topic which was likely to come before the convention. To this end a circular letter was sent to all the men, about nine hundred in number, who had taken out nomination papers for election to the convention, asking them on what topics they would suggest that information be compiled. About one hundred different topics were mentioned, and on thirty-six of these, bulletins were prepared, of which an edition of five hundred copies was printed and a copy sent to each delegate as soon as issued. In order to achieve the largest usefulness, all of these bulletins should have been in the hands of the delegates before the convention assembled. The commission was appointed too late to make this possible, and the best that it could do was to see that each bulletin was ready before the subject with which it dealt was reported upon by a committee of the convention.

In preparing its bulletins the commission sought to give them three characteristics. They must be concise, else they would not be read; they must be authoritative, so that the delegates could accept their statements of fact as established and safely base conclusions upon them; they must be impartial and free from attempts at propaganda. When this series of bulletins began to appear, few of the delegates paid much attention to them, but this attitude gradually changed, and upon at least

one occasion the convention postponed its debate upon a certain topic until it had received the commission's bulletin which was then nearing completion.

The commission not only compiled information for the convention, but it was made an integral part of the convention's machinery. Its members frequently appeared before committees, it assisted the delegates in the drafting of amendments, and its vice-chairman was made an officer of the convention and served throughout as technical adviser to committees. The most important function of this office was to assist the committee on form and phraseology in the final revision of proposed amendments before they were sent to the people.²

The convention was called to order by Governor McCall. This was peculiarly fitting, for he more than any other man is entitled to the credit for the enactment of the legislation which resulted in the holding of the convention. The delegates chose for their president Hon. John L. Bates, former governor of Massachusetts, and much of the success of the convention was due to his great ability as a presiding officer, to his fairness, and to the skill with which he helped the convention over many hard places.

The first session of the convention, which occupied the summer of 1917, was dominated by the question which had been uppermost in the public mind since the holding of a convention was first proposed, namely, whether Massachusetts should adopt some form of initiative and referendum. A measure covering the subject was introduced and held the center of the stage throughout the session of 1917, but was put aside from time to time to permit the consideration of other questions which it was deemed necessary to submit to the people at the November election. Three such measures were agreed upon by the convention and adopted by the people in November, 1917. Each of the fourteen counties returned a majority in favor of each amendment.

² The members of the commission were William B. Munro, chairman, Lawrence B. Evans, vice-chairman, and Roger Sherman Hoar.

The first of these empowers the legislature to provide for voting by voters who are absent from home on election day. Absent voting is not unknown in America, but it has usually been thought of as a war measure enacted in order to prevent the disfranchisement of soldiers and sailors. Aside from this class, however, it has been estimated that more than 20,000 voters in Massachusetts—locomotive engineers, brakemen, traveling salesmen, chauffeurs, fishermen and students—lose their votes every year through absence. These men, rather than the soldiers and sailors, were uppermost in the mind of the convention when it passed this amendment with practically no opposition. It was ratified by the people by a vote of 231,905 to 76,709.

Another amendment authorizes the legislature to make provision for public trading in the necessities of life and for shelter in time of public exigency. Massachusetts has been visited several times in recent years by such calamities as the great fires at Chelsea and Salem; and the rule laid down in *Lowell v. Boston*, 111 Mass. 454, (1873), seemed to make it impossible for the state to extend adequate relief. These events, but especially the conditions of living which bore with particular hardship upon the poor, were responsible for a strong sentiment in favor of enlarging the power of the legislature in this direction. This amendment also received popular ratification by a vote of 261,119 to 51,826.

The third amendment adopted by the people was the "anti-aid amendment," which prohibits any appropriations of public money to institutions not under public control. From 1860 to the end of 1916 Massachusetts had appropriated nearly \$19,000,000 for institutions of this kind. In recent years the attempts of various churches to obtain public funds for their schools and hospitals threatened to divide the people of the state into hostile groups and create an atmosphere of suspicion and antagonism. Several times amendments have been introduced in the legislature forbidding appropriations for institutions under the control of any church; but the convention went further, and by a vote of 275 to 25 adopted as drastic a provision as

possible. Except as provided in existing contracts, there is henceforth to be no appropriation of public money for any private institution. In the weeks preceding the election this amendment was sharply debated. The Catholic hierarchy, led by Cardinal O'Connell, strongly opposed its adoption, on the ground that it was an attack on the Catholic Church, and was unjust to that body in that it shut off the possibility of aid to the parochial schools. One of the most gratifying features of the vote on the amendment both in the convention and at the polls is the fact that it did not divide on religious lines. There were about one hundred Catholic delegates in the convention, only nine of whom voted against the amendment, while at the polls both priests and laity showed marked independence. The amendment was ratified by a vote of 206,329 to 130,357. By this action it is hoped that a most troublesome question has been permanently removed from political discussion.

For the purpose of comparison it may be well to state that the total vote for all candidates for governor at the election in 1917 was 387,927, while the total vote for and against each of the amendments was respectively 308,614, 312,945 and 336,686.

When these three amendments had been submitted to the people, the convention resumed its discussion of the initiative and referendum, and finally adopted a measure which provides for the initiation by the people of both constitutional amendments and of laws and also for a compulsory referendum on enactments of the legislature. The measure is too long for detailed description, but its distinguishing feature as compared with similar measures in other states may be said to be its exemptions. Neither the judiciary, nor judicial decisions, nor the anti-aid amendment, nor any of the great safeguards of liberty set forth in the bill of rights may be made the subject of an initiative petition. Having adopted this amendment by a vote of 163 to 125, and having provided that it should be submitted to the people at the state election of November, 1918, the convention adjourned until June, 1918.

When the convention reassembled, it should have felt stimulated by the endorsement implied in the overwhelming majorities

by which the three amendments submitted had been ratified. The result however was otherwise. Although some of the questions discussed at the second session were not inferior in importance to those of the first session, it was noticeable that the interest of many of the delegates had materially flagged, and a considerable number paid little attention to the proceedings. Eighteen amendments were, however, approved by the convention, and at the election in November, 1918, they, as well as the amendment establishing the initiative and referendum—adopted too late for action in 1917—were ratified by the people.

Among the amendments which were adopted at the second session were several which, while not of great intrinsic importance, were desirable modifications of the existing constitution. Among these were two amendments relating to the militia. It has already been indicated that the constitution of Massachusetts antedates the Federal Constitution, and some of its provisions were better suited to the relation which existed between the central government and the states under the Articles of Confederation than to the relation which now exists. This was most conspicuous in those clauses relating to the militia, and the amendments adopted do little more than bring them into harmony with the provisions of the Federal Constitution.

Another of the minor amendments provided for the order of succession in case the offices of governor and lieutenant governor should become vacant at the same time. The former provision that in such a contingency the office of governor should devolve upon the executive council was cumbersome and unworkable. The amendment provides that when both offices are vacant the secretary, attorney-general, treasurer and auditor shall succeed in the order named.

Massachusetts is one of the few states which retains a judiciary appointed to serve during good behavior. In the convention the system was attacked, partly because it was alleged that there was no convenient means of getting rid of unfit judges, partly because it was said to be out of harmony with the present tendency, represented by the support of such devices as the initiative and referendum, toward direct government by the people.

Many proposals for the modification or entire abolition of a judiciary appointed for life were made, but all were defeated by substantial majorities. The convention was not convinced that any of the radical changes proposed would be for the better. The only amendment relating to the judiciary which the convention submitted to the people provides that any judge who has become physically incapacitated may, after notice and hearing, be removed by the governor and council. The ancient remedies of impeachment and removal by address, both of which have been employed in Massachusetts, are still retained.

The practice on the part of the legislature of appointing committees to sit during the recess, each member of which was usually paid one thousand dollars for his services thereon, had grown to such proportions that it had aroused widespread criticism. The legislature of 1918 provided for eight recess committees having in all fifty-one members. There was a general feeling that many of these committees were entirely unnecessary and that their appointment was the result of political jobbery. The convention therefore adopted an amendment providing that no member of the legislature should be appointed to any office created during his term and that no member should receive additional compensation for service upon any recess committee "except a committee appointed to examine a general revision of the statutes of the commonwealth when submitted to the General Court for adoption." This amendment seemed to put an end to an abuse which had come to be regarded as a scandal, but the convention did not correctly estimate the lengths to which the greed of the members of the legislature would carry them. After this amendment had become part of the constitution, the legislature created a recess committee on the revision of the statutes, which committee consists of sixty-one members—more than one-fifth of the total membership of both houses—each of whom was to receive one thousand dollars and mileage. "All of which," says a clever newspaper man, "shows that one melon is as good as a half dozen if the one is large enough to go around." The legislature also clearly violated the spirit of that part of the amendment which prohibited the appointment

of members to offices created during their term. It passed a bill for the increase of their own salaries and made the measure retroactive so that the men who voted for it would benefit by it. This measure became a law over the governor's veto.

Another amendment provides that within the first sixty days of a legislative session the legislature may take recesses amounting to not more than thirty days. This provision, unusual in our state constitutions, is the outgrowth of the legislative practice of Massachusetts which requires committees to report upon every bill which is referred to them. There is no "pigeon-holing" of bills. At the beginning of a session, therefore, much of the time of committees must be given to hearings, and it is for the purpose of allowing these to proceed without interruption that provision was made for extended recesses of the legislature.

Another innovation in legislative practice is provided for by an amendment which permits the governor to return a bill to the legislature with a suggestion of changes in it which will make it acceptable to him. If the legislature makes the changes, the bill is submitted to the governor in its revised form. If not, it is returned to him in its original form, and he then determines whether or not he will sign it. This plan has been found to work well.

Three of the amendments adopted in 1918 are such innovations that they may become landmarks in American constitutional history. The first authorizes the regulation of advertising in places within public view. Whether or not the control of bill-boards falls within the police power has long been a vexed question in law. In Brazil high taxation affords sufficient protection against unsightly advertising. In England, France, Germany, Italy and several other countries, regulation is frankly based on esthetic considerations, but in the United States the decisions of the courts indicated that legislation for the regulation of bill-boards must be based upon such well-recognized heads of the police power as the protection of the public health, morals or safety, and it was only when it was incidental to these objects legislation having esthetic considerations in view could be sustained. So far as it is possible for a state to authorize

regulation from esthetic considerations alone, Massachusetts has done so. Whether the new amendment is offensive to the due-process clause of the Federal Constitution yet remains to be determined.

Allied in some respects with the amendment for the regulation of advertising in public places is the amendment authorizing the legislature "to limit buildings according to their use or construction to specified districts of cities and towns,"—in other words, to establish building zones. The reasons for this amendment are obvious. One has only to observe the condition of any city in the United States to perceive the need for placing some restriction on the freedom of land owners as to the character of the buildings which they may erect or the uses to which buildings may be put.

One of the most significant amendments adopted by Massachusetts is that which authorizes the establishment of compulsory voting. We have long been accustomed to provisions for compelling the performance of other kinds of civic duty. Men's property may be taken for public purposes without their consent. They may be required to perform jury duty. They may even be compelled to risk life and limb in military service. Why, then, it was argued, may not a voter be compelled to give the public the benefit of his judgment on men and measures at the polls? The amendment which has been adopted, and which is the second only of its kind to be incorporated in any constitution in this country, is permissive in its terms and the power conferred has not yet been exercised.

Massachusetts has clung tenaciously to annual elections. John Adams' famous dictum, "where annual elections end, there slavery begins," has met with almost literal acceptance. In curious contrast to the rule in the judiciary department, where members were appointed to serve during good behavior, the members of the executive and legislative departments were chosen for terms so short that they began their campaigns for reelection almost as soon as they took office. This was not only a serious interruption of public business, but as the holding of a general election in Massachusetts involves the expenditure by the com-

monwealth and candidates and political committees of more than a million dollars, it was argued that the advantages of annual elections were not sufficient to justify their cost. When the amendment providing for biennial elections was introduced at the first session of the convention, the sentiment of the delegates was undoubtedly opposed to it, but the longer the subject was considered and the more the experience of other states was studied, the less reason there seemed to be for adhering to a system which no other state was willing to adopt. While providing for biennial elections, the amendment expressly requires annual sessions of the legislature.

Two amendments deal with the finances of the state. One provides for the establishment of a budget system, the central features of which are the preparation of the budget by the governor and the vesting in the governor of the veto power over items in appropriation bills. The other amendment deals with the borrowing power of the state, and provides that its credit shall never be loaned or given to any individual or to any association or corporation under private management. The amendment also provides safeguards for the contracting and discharge of public debts.

Another amendment which indicates strongly the present trend of thought is one which deals with the development of natural resources. Its language merits setting forth in full:

"The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the commonwealth are public uses, and the general court shall have power to provide for the taking, upon payment of just compensation therefor, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof and to enact legislation necessary or expedient therefor."

This amendment is so phrased as to keep the development of natural resources to the fore, and perhaps obscure the real extent of the authority which it confers to embark on collective enterprises. A careful study of its language is likely to lead one to

agree with the judgment of the president of the convention that "its adoption by the people is pregnant with great possibilities and may result in its recognition hereafter as by far the most important amendment submitted by this convention to the people."

One of the questions which was extensively discussed by the convention was that of the reorganization of the executive departments. Besides the governor, lieutenant governor, council and the four elective officers provided for by the constitution, there had gradually grown up more than a hundred executive or administrative officers, boards and commissions, whose duties sometimes overlapped and who were subject to practically no central control. Many delegates thought that the whole executive department should be centered in the governor, who should be given almost a free hand in it and who should be held responsible for the results. This, however, was too radical a departure from previous practice, and all proposals having this object in view were rejected. It is not altogether creditable to the convention that its refusal to enlarge the executive authority of the governor was influenced very considerably by the adverse opinion which was held of certain recent governors and gubernatorial candidates. These proposals were defeated by arguments *ad hominem* rather than by opposition to the principle which they involved. All that the advocates of executive centralization and responsibility were able to obtain was an amendment which required the legislature to make provision for the organization in not more than twenty departments of all the executive and administrative work of the commonwealth. This has been done, but it is as yet too early to judge of results.

Three other amendments of lesser importance remain to be noticed. One requires that all charters, franchises and articles of incorporation shall always be subject to alteration and annulment. The legislature already had power to effect this result, but it is now mandatory. Another amendment makes women eligible to appointment to the office of notary public. A third amendment authorizes the taking and preservation of places of historical interest.

As already stated, the Massachusetts constitution of 1780 is the oldest written constitution now in force anywhere in the world. To keep it abreast with the needs of the state and with changing sentiment, sixty-six amendments have been adopted. As a result, it is often difficult to determine with precision what the requirements of the constitution are as to any given point. Hence, before adjournment on August 21, 1918, the convention provided for the appointment of a committee to prepare a revised draft of the constitution, striking out all obsolete matter, and inserting in the proper place each provision that was still in force. The chairman of the subcommittee which had active charge of this work was Hon. James M. Morton, retired justice of the supreme judicial court, whose wide experience and great learning and beneficent presence contributed so much to the work of the convention. Judge Morton prepared a revision (the Morton draft), the writer also prepared one (the Evans draft), and upon these two the committee formed a third draft, which was accepted by the convention at a short session in August, 1919, and was ratified by the people at the November election by a majority of more than 200,000. Unfortunately, in an effort to make sure that the revision had not altered the original sense of any provision of the constitution, some one obtained the insertion of the following ill-considered section:

“Art. 156. Upon the ratification and adoption by the people of this rearrangement of the existing constitution and the amendments thereto, the constitution shall be deemed and taken to be so rearranged and shall appear in such rearranged form in all future publications thereof. Such rearrangement shall not be deemed or taken to change the meaning or effect of any part of the constitution or its amendments as theretofore existing or operative.”

When the supreme judicial court was asked to determine whether the new draft was now the constitution of the state or whether the old instrument with its sixty-six amendments was still in force, the court held that the paragraph above quoted indicated that the new draft was not intended to supplant the old constitution, which therefore still remained the fundamental

law. At the ensuing session of the legislature Senator Loring, who had been chairman of the committee on form and phraseology of the convention, endeavored to persuade that body to submit the new draft, with the obnoxious article omitted, as a constitutional amendment, but the motion was rejected almost unanimously.

In order to form a just estimate of the work of the constitutional convention it is necessary to look not only at the measures which it adopted but also at those which it refused to adopt. It is impossible of course to enumerate all the constitutional provisions which it might have submitted to the people for their approval. These cover the whole range of government. Neither would it be profitable to consider the proposals, several hundred in number, which were unfavorably reported by committees and were never considered by the convention. But of the proposals for amendment which were before the convention and were extensively debated and finally rejected, three are of special importance, and as to these three, students of politics and government are practically unanimous in disagreeing with the judgment of the convention.

The first of these proposals authorized the legislature to classify property for purposes of taxation. The constitution of Massachusetts restricts the taxing power of the legislature, except as to taxes on incomes, to the levying of "proportional and reasonable" taxes. The supreme court has held repeatedly that the word "proportional" prevents the taxing of different kinds of property at different rates. All property must be taxed alike in proportion to its value. This rule may have been just and expedient in 1780, when the forms of property were less numerous and the economic organization of society less complex than at present, but it is contrary to the opinion which now prevails as to the proper basis of a sound system of taxation. Massachusetts particularly requires the elasticity which the levying of taxes by classes permits, for there is no part of the country where property has been accumulated in forms more easily evasive of the tax gatherer or where economic interests are more intricate. Yet the convention refused to alter the ancient rule.

If the gossip of the corridors can be relied upon, certain real estate interests in Boston were chiefly responsible for the defeat of the amendment.

On the subject of social insurance the convention again failed to act in accordance with prevailing opinion. Whatever one may think of the merits of old age pensions, health insurance, accident insurance and other forms of social amelioration, particularly as applied to the needs of his own community, there is general agreement that every state legislature ought to be vested with the power to enact legislation of this kind. Whether the power ought to be exercised is another question. Several amendments were drafted for the committee on social welfare, all of which were reported to the convention. Among these the convention chose for discussion the most comprehensive one, one which authorized the legislature to enact practically any form of social insurance which met with its approval. As this proposal was supported by those members of the committee who were regarded as ultra conservative, an easy victory in the convention was predicted. But it was defeated, and strange to say, largely through the opposition of the labor delegates. It has been suggested that the amendment was unnecessary, in as much as the residuary power of the legislature is probably broad enough to cover legislation of this kind. This opinion is probably correct, but in the case of a matter of such extreme importance all doubt should be removed. Should Massachusetts adopt a system of old age pensions, for instance, the constitutionality of the legislation would undoubtedly be disputed, and the matter would be judicially tested. It is unfair to the courts to place upon them the burden of deciding, on purely legal considerations, a question which the people ought to decide for themselves. Much of the criticism of the courts for decisions in cases involving the validity of social legislation would be avoided if the people would remove from their constitutions the ambiguities which make judicial action necessary.

The third amendment which the convention rejected, but which all students of government will agree should have been adopted, made definite provision for the calling of a constitutional

convention. The constitution of 1780 provided that in 1795 the question should be submitted to the people as to whether a convention should be held. If they should decide in the negative, as they did, no further provision was made for resubmitting the question or for calling a convention in any other way. The convention of 1820 provided a method for amending the constitution through proposals initiated by the legislature, and it has been argued by some that the specific enumeration of this method excludes all others. A like situation exists in Rhode Island, and its supreme court has ruled in an advisory opinion that a constitutional convention cannot be held in that state. The supreme judicial court of Massachusetts has said, in an advisory opinion written by Chief Justice Shaw, that amendment on the initiative of the legislature is the only method of amendment authorized by the constitution of Massachusetts. Just what the court meant by this cryptic utterance is uncertain. If it meant that amendment through legislative action is the only method mentioned in the constitution, it stated an obvious fact. But if it meant that the mention of this method of amendment was sufficient in itself to remove from the residuary power of the legislature the authority to provide for a constitutional convention, many would dissent. Those who would apply in this situation the maxim *expressio unius exclusio alterius* fail to take into account the high nature of the residuary power of the legislature. It represents the whole political authority of the people. Subject only to the limitations of the federal and state constitutions, the power of the legislature embraces the whole range of political action. It is not to be presumed that it has been cut down unless the intention of the people is unmistakable. When the people of Massachusetts gave the legislature the power to initiate amendments, it did not take from it the power to adopt any other method of constitutional revision which it had previously had the power to adopt. Both reason and constitutional practice in Massachusetts clearly establish the power of the legislature to submit to the people the question of calling a convention. But the discussion of the subject establishes with equal clearness the wisdom of removing all doubt. Yet a resolu-

tion giving the legislature power to submit to a popular vote the question of calling a convention was rejected. The explanation is not clear. The resolution was acted upon late in the second session. The delegates were tired and it was difficult to attract their attention. The debate, particularly on the part of the opposition, was weak. The resolution was defeated perhaps as much by inertia as anything else, assisted by a feeling that the convention had already done enough.

Not the least interesting feature of the constitutional convention and its work is the action of the people upon the amendments submitted. At the election of 1917, three amendments were submitted, and the action of the people on them showed the popular referendum in its very best light. All of these amendments were adopted by substantial majorities. Furthermore each of them received a majority of votes in each county in the state, and in no instance was the number of blank ballots as large as the number of ballots in favor of the amendment. Still more impressive was the fact that the total vote for and against each of these amendments was about 85 per cent of the total vote cast for the various candidates for governor.

The action of the people upon the nineteen amendments submitted at the election of 1918 was in sharp contrast with their action in 1917. To be sure, all the amendments were adopted, but there was no such general approval of the action of the convention as had prevailed in the preceding year. In 1917 every amendment received a majority in every county, while in 1918 no amendment received a majority in every county. In fact three counties, Bristol, Nantucket and Franklin, gave majorities against every amendment. The amendment providing for the initiative and referendum was approved by only two (Suffolk and Plymouth) out of fourteen counties. In 1917 the vote on the anti-aid amendment was the largest vote cast on any of the amendments, and was 86.5 per cent of the total vote cast for governor. In 1918 the vote on the initiative and referendum was the highest vote cast on any of the amendments, but was only 78.4 per cent of the total vote for governor. The comparison may be stated in still another way. While the total

vote for governor in 1918 exceeded that of 1917 by 34,443, the highest vote on any amendment in 1918 was 3937 less than in 1917.

Again, in 1917, the number of votes for each amendment was greater than the number of blank ballots, while in 1918 that was true of only four out of nineteen amendments. It is perhaps not without significance that these four were the first four on the ballot. Having expressed an opinion on four amendments the interest of many voters waned or their energy was exhausted, and on the remaining fifteen amendments they indicated no preference. This phenomenon cannot be explained on the ground that the first four amendments were more important than any of the others, for their order upon the ballot was determined by the order in which they passed the convention. Neither were they more likely to arouse general interest. Amendment number four, for instance, provided that property of historical or antiquarian interest might be taken by the state. On that proposal the number of blank ballots was only 164,249, while on the amendment providing for biennial elections the number of blank ballots was 177,991. On the amendment providing that all charters and franchises should be subject to revocation the blanks numbered 187,827, and on the amendment establishing a budget system the blanks numbered 192,407.

There was one undesirable practice on the part of some of the delegates to the convention which should be mentioned in order that future conventions both in Massachusetts and elsewhere may prevent it. That is the abuse by delegates of the privilege of revising the stenographic report of the speeches which they addressed to the convention. When the question of printing the debates was under discussion in the convention, it was pointed out that these debates would not only have value in the future as discussions of the subjects with which they dealt, but also that they would throw light upon the meaning of doubtful clauses in the constitution, and hence would be consulted not only by students of public affairs but by legislators and by the courts. It is obvious however that the printed debates lose their value as a guide to the meaning of the constitution if they

are not a true record of what was said in the convention. We are all familiar with the scandalous length to which Congress has gone in granting leave to print and the privilege of extending remarks. It is believed that the constitutional convention never granted to any delegate formal leave to print, but the same result was attained through the privilege accorded to each delegate of revising the stenographer's report of his speech. In at least one instance, one of the most prominent members of the convention revised his speech by substituting for it an entirely new one. The speech in the printed report was never delivered to the convention, and as the debates were not printed until after the adjournment of the convention, there was no opportunity for the delegates to detect this falsification of the record. Obviously such a speech is of no value as a guide to the meaning of the provision under discussion, for since it was never delivered, its assertions could not be corrected nor its arguments refuted.

The constitutional convention of Massachusetts furnishes strong evidence of the change which has come over the view taken by the people of the functions of government. Whether their conclusion be a wise one or not, it is unquestionably true that the people of our day have rejected Jefferson's maxim that that government is best which governs least. Public opinion requires that the field of governmental activity shall be enlarged, and that our political machinery, whose function a century ago seemed to be chiefly a protective and defensive one, shall now become the active agent for the conduct of enterprises which were formerly under private control. The wider the range of government becomes, the more necessary it is that its agents shall have large freedom of action. The carefully devised series of checks and balances to which John Adams paid eloquent tribute may easily result in deadlock. In accordance with the prevailing opinion of the time, most of the amendments submitted to the people of Massachusetts in 1917 and 1918 enlarged the sphere of the government and removed existing restrictions, while only a few of them imposed new restrictions. In this respect the convention of 1917-18 is in marked contrast with the earlier conventions in Massachusetts. The convention of

1820 submitted fourteen amendments to the people, only one of which involved any increase in the power of the legislature, while the convention of 1853 recommended no increase at all in the power of the legislature. Abuse of official authority is no longer the bugbear which it was to our grandfathers, or at any rate the people of our day are willing to incur the risk of such abuse in order to leave to their government freedom to act.

While the Massachusetts convention showed the prevailing opinion as to enlarging the sphere of government and removing restrictions on the action of governmental agents, it was essentially a conservative body. None of its recommendations was radical. It adopted the popular initiative and referendum, but surrounded it with many safeguards. It refused to make any substantial change in the judiciary. The substitution of biennial for annual elections was essentially a conservative measure. In fact, it may be said of all of the twenty-two amendments which it submitted to the people that they made only such changes as are to be expected in any enlightened and progressive community which endeavors to adapt itself to the demands of new conditions and to keep in touch with the expanding range of men's thoughts.

MILITARY POWER AND CONSTITUTIONAL DEVELOPMENT IN CHINA

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It is now nine years since the outbreak of the Chinese revolution. It is fifteen years since the Manchus attempted to maintain their control by introducing representative institutions into China. The development toward constitutional and representative government under the Manchus was checked in 1911 by the revolutionary movement. When the Chinese Republic was established as the successor to the alien Manchu Empire it was felt that the problem of modernizing China bade fair to be solved, and that in an orderly way her political institutions would be brought into harmony with western standards. Unfortunately that orderly progress has not come. Parliamentary government under the Nanking (provisional) Constitution was replaced by the dictatorship of Yuan Shih-kai under the arrangements of the so-called constitutional compact, which in turn was followed by the attempt to reestablish the monarchy. The failure of the monarchy movement brought back parliamentary government, but before a permanent constitution could be adopted Parliament was again dissolved, and a government controlled by a military clique set up in its place. Since this military government was unacceptable to the southern provinces, the country became divided. So far it has not been possible for the country to reconcile its differences. Instead of an ordered constitutional progress, has come apparent failure in the effort to establish representative government. The name of a republic has been maintained, it is true, and the forms of constitutional government have been retained, but a permanent national government has not been set up, nor has popular government replaced the paternal despotism of the past.

A variety of causes have produced this result. Among these causes may be noted the lack of readiness of the people to assume power; the lack of an adequate understanding, on the part of the revolutionary leaders, of the problems, the difficulties and the responsibilities of parliamentary government; the complication of the internal problem by the nature of the relationships established by the European Powers in China, both with respect to the Republic itself and among themselves; the new problems created by the outbreak of the World War, with the concentration of the attention of Europe and the United States on the European situation, which has made possible the development of Japanese hegemony in the Far East; and finally, the presence in China of a military power, which, existing by the side of the civil administration from the beginning, was able to completely overshadow it and finally to entrench itself in control of the government. The last of these causes of the failure of representative government in China deserves a more extended consideration than has commonly been given it in discussions of Chinese politics.

During the first years of the Republic the power of the military chiefs was in the provinces rather than in the national government, and their final control of the central government has rested upon their strength in the provinces. Consequently, in order to understand the successive mutations of national politics, it is necessary to consider the structure of the provincial and local governments, for in the nature of local government in China, and in the relationships of the provinces and the central government, can be found the explanation of the fact that regardless of the control at Peking, or the apparent division of the country, the Chinese people have continued in their usual manner of living, undisturbed by revolution, or by foreign domination of the state. No matter how extensive the foreign control of the national government, China will continue to exist through her local institutions.

Before the foreign impact on China began to be felt the administration of the country was extremely decentralized. Communication between the capital and the provinces, and between

provinces, was slow and unsatisfactory; the lack of facilities for travel prevented a strong central control or the growth of any great feeling of unity among the provinces. The country was not in intimate relationship with the non-Chinese world, and its very isolation aided in emphasizing internal differences of habit and tradition. These differences were very marked in respect to such things as dialect, food preparation, and even law. To the individual a man from another province was a stranger, a foreigner. There was developed a provincial and a local, rather than a national feeling. Instead of a man calling himself a Chinese, he was an Anhui or Kuangtung man. This spirit of provincialism was further developed through the differences existing between sections within the province. Thus, the Anhui man was more definitely particularized as being from a certain hsien, or district, within the province. Hsien pride was even more highly developed than provincial patriotism.

From the political and imperial standpoint, this provincial distinctness was recognized in the large measure of administrative autonomy accorded to the province. As Morse points out,¹ as long as it contributed its share of the imperial revenue, and followed the general policy of the central government, there was no direct interference in the affairs of the province. And even in determining the general policy of the state, the action of the Emperor tended toward the hortatory rather than the mandatory.

This feeling of the distinctness of provincial from imperial interest was well brought out at the time when England was using force to secure the opening of the country to foreign intercourse. During the second of the so-called Opium Wars, when the British were engaged in active operations against the city of Canton, friendly relations with the people and officials were maintained at the other "open" ports. Later, when the British and French were hammering on the gates of Peking, and the Court had been forced to flee to the North, the imperial authorities at Shanghai felt entirely free to accept British aid in the

¹ *Trade and Administration of the Chinese Empire*, pp. 48-49. See also *Village Life in China*, by Liang and Tao, pp. 46-47.

defence of the city against the Taiping rebels.² Even at so recent a time as the war between the Japanese and the Chinese in 1894-95, the southern and central provinces refused to lend their full strength to the defence of the northern frontier on the ground that their interests were not affected. Not only was there a feeling of the separateness of provincial from imperial interests, but there was a similar lack of integration of the interests of neighboring provinces. For example, in time of a flood of the Yellow River, instead of all of the affected provinces coöperatively safeguarding the common interests, each province safeguarded itself without considering the way in which the measures taken might be adversely affecting its neighbor. This lack of coöperation extended into many phases of inter-provincial life.

From the structural standpoint, pre-revolutionary China had a well-worked-out provincial administrative system. All of the officials from the highest, the viceroy or governor, to the lowest, the district magistrate, were appointed and removed by the Emperor. Gradations in the provincial hierarchy were carefully worked out to the end that there should be a definite fixation of responsibility. Thus the viceroy was held responsible for the maintenance of peace, order and prosperity in the province or provinces under his jurisdiction; the governor in the province; the prefect in the largest territorial division of the province; and the magistrate in the district. But within the broad restrictions necessitated in maintaining peace and order, transmitting the required funds to the imperial treasury, and not directly acting counter to the general policy prescribed from Peking, the officials were permitted large discretion in their respective governments. Consequently ways and means were determined locally rather than nationally, with the result that direct imperial commands were executed variously from province to province, according to the variations in local custom and tradition, and also according to the difference in point of view and interest of the provincial officials. In the same way there was a similar, although perhaps lesser, variation from district

² Williams, *Middle Kingdom*, II, p. 606.

to district within the province. The large discretionary power exercised by the provincial officer was brought out very clearly in 1900 during the Boxer troubles. At that time the imperial instructions were carried out completely in Chihli province, but were as completely disregarded by Yuan Shih-kai in Shantung, and by Chang Chih-tung in the central Yangtze provinces. Similarly, national treaty obligations were carried out differently in different parts of the country. This is revealed in the communications addressed from time to time to the Chinese government by the representatives of the Powers. The lack of uniformity is further shown in the expostulations of the Emperor Kuang Hsu at the time of the reform movement of 1898. In one of the edicts of the times he exhorts the officials to a greater show of zeal in carrying out the proposed reforms, pointing out the fact that while changes had been made in some provinces, in others nothing at all had been done to carry out the imperial policy.

Up to the beginning of the constitutional movement in 1905, the provincial governor had the same theoretically unlimited authority in the province as the Emperor had in the Empire. Both were, however, unlimited only in theory, since the danger of uprising against their authority forced them to govern their actions by the prescriptions of custom and tradition. In China, a country of custom ingrained and fixed through the centuries, the possibility of insurrection naturally constituted a very great limitation on the exercise of power. But disorder or the threat of disorder was the only way of calling attention to popular feeling, and this method was used chiefly in grave cases, or in times of economic disturbance. No branch of either the national or provincial government served as the exponent of public opinion.³ The most important feature of the constitutional movement under the Manchus, was the endeavor to establish representative assemblies. This movement resulted in a very important modification of the provincial governments.

³ There was, it is true, the censorate, to keep the Emperor in touch with the provinces, but the censors represented the Emperor and not the people, and were interested in public opinion only as a reflection on the exercise of power by an imperial officer.

An imperial edict issued in 1907 provided for the establishment of assemblies in the provinces with "the power to discuss, pass resolutions, and apply to their Viceroys or Governors for decision and execution."⁴ These assemblies were actually established and opened in the fall of 1909. Of their powers and position it has been said that an assembly is "the connecting link between local and national government; secondly it is a channel to direct the opinions of the people of a province to the notice of the executive, in order that the executive may have a more complete knowledge of the needs of the people than it would otherwise obtain; but the assembly is only a channel of speech. It is not an instrument for action; it can only offer advice, and the advice it may offer is strictly confined to matters within definite limits; and thirdly the assembly performs a function of education. It trains men and provides them with experience for the higher duties to be met with in the national Parliament. In addition to these main purposes, it has the right to criticise and censure the action of executive officials, though it has no power to punish or degrade."⁵ After their convocation these assemblies immediately began to assert themselves in the limited field marked out for their activity, and to assume even greater powers than had been granted. In addition to interfering in provincial matters, they constituted a focal point for provincial opposition to the central government and for the agitation for an early summoning of the national parliament. By 1911 the assembly had established itself as an effective part of the provincial system of government.

During the ten year period preceding the downfall of the Manchus the problems of foreign intercourse had brought home to the imperial authorities the necessity for a greater centralization of the state. Peking had been forced to interfere more and more in the administration of the provinces in order to secure greater uniformity in the execution of public policy. This movement toward centralization had, of course, aroused great

⁴ *China Year Book*, 1912, p. 355.

⁵ Bevan, *Constitution Building in China*. Cited in *China Year Book*, 1912, p. 364.

opposition in the provinces. With the beginnings of the constitutional movement, after 1905, a general policy of centralization had been definitely adopted. This was extended to railroad construction and operation. The policy of extended construction under central direction necessarily involved the introduction of increased amounts of foreign capital into China, and it also forecast the limitation of provincial railway enterprise. Consequently, provincial opposition to the policy developed so strongly that it had to be virtually abandoned. At the time of the conclusion of the Hukuang railway loan with the Four Power Banking Group, in the spring of 1911, open revolt came in the great western province, Szechuen. The spirit of revolt spread until, in the fall of 1911, it resulted in the revolution which brought about the abdication of the Manchu Emperor.

The Chinese revolution of 1911 was not a carefully planned, well-organized movement. It got under way in the various provinces at different times and for differing reasons. There had been a long continued anti-Manchu agitation directed by revolutionary organizations, it is true, but the actual outbreak was spontaneous, and it was only with the growth of the movement that it came under a common direction.⁶ The immediate cause of the initial blow at Wuchang was a mutiny of the imperial troops stationed there. The direction of the Wuchang operations was put in the hands of one of the imperial officers, Li Yuan-hung. Because of his strategic location⁷ General Li rapidly became a dominating figure in the revolutionary councils. The mutiny at Wuchang was followed by the formation of a revolutionary party at Shanghai; and by the repudiation of the Manchu authority by the commanders of the Yangtze fleet, and the reduction of Nanking through the combined action of a military and naval force, which gave the revolutionists control of central China, and also cut off the southern provinces from Peking. The provinces to the south of the Yangtze one by one joined the opposition to the Manchus. In many cases this was accomplished by the provincial officials announcing their adher-

⁶ *China Year Book*, 1912, pp. xi-xii.

⁷ At the central point of the Yangtze valley.

ence to the revolutionary cause through a simple declaration of the independence of the province. Where the officials remained faithful to the central government, control was assumed either by revolutionary bodies or by the regular provincial assemblies. Finally, in order that there should be some common authority empowered to speak for the revolution, the self-constituted "Military Government of the Chinese People" which had come into power at Shanghai requested the "independent" provinces to send delegates to Nanking to form a government able to speak for all factions.⁸ These delegates were appointed in various ways, depending upon the nature of the control in the provinces. Thus some were appointed by the provincial assemblies, some by the officials who controlled the province, and some were self-appointed.⁹ It was with this Nanking assembly that Yuan Shih-kai negotiated the settlement by which the Manchu Emperor abdicated, and the republican form of government was accepted for a united China.

The conclusion of peace naturally found considerable bodies of men under arms in all parts of China. At the time of the outbreak there were two types of effective military organization in the country. In 1901 the imperial government had begun the development of a national army, the Lu-chun. Eventually the direction and control of this force was to be centralized in a board of war at Peking, with a distinct military organization in the provinces. By 1911 thirty-six divisions had been organized but only a part of this force had been removed from the control of the viceroys or governors. In addition to this national army, each province had its own force, which was in the nature of a provincial constabulary. These troops were under the direct control of the viceroy.¹⁰ Furthermore they were paid from the provincial purse. Consequently the obedience of the soldier was rendered to the governor or commander, and he proved equally

⁸ Up to this time the imperial government had dealt with Li Yuan-hung as the leader of the revolution.

⁹ These last were the "gentry" of the province, who were looked to as leaders in the absence of any official direction.

¹⁰ *China Year Book*, 1912, ch. 15. By an imperial edict of 1907 the viceroy was given control of the military administration in his jurisdiction. *Ibid.* p., 237.

ready to fight for the Emperor or against him as the will and interest of his employer directed. These regular troops were increased in every province with the progress of the revolution, recruits coming particularly from among those whose economic condition was poor. In many cases bands of brigands were transformed into regular troops under the command of the provincial authorities.

At a time when civil control was relaxed, the more soldiers a man had under his command the greater would be his political influence. Military dictatorships were set up in many of the provinces both in the North and the South, there being only this difference between the two sections of the country: the southern commanders paid lip-service to the cause of the revolution, while the northern generals continued to recognize the imperial authority. In addition to military provincial governments, individual military leaders had to be reckoned with as semi-independent powers,¹¹ existing in many provinces as *imperia in imperio*.

Yuan Shih-kai's accession to the presidency in 1912 was decidedly the result of a compromise between conflicting interests. By the terms of the abdication edicts he was given full power to establish a republican government for China, and to reach an agreement with the Nanking revolutionary government by which the North and the South would be united. As the supreme commander of the imperial forces, he alone had the allegiance of the northern generals. Either the revolutionary party must accept Yuan and give him position and power in the Republic or it must overthrow him by force. The latter appeared to be impossible since the southern leaders had reached the end of their financial resources. An agreement was reached, therefore, by which he accepted the principles of the revolution and was chosen by the Nanking assembly as the provisional President of the Republic.¹²

¹¹ Such as General Chang Hsun, the commander of the imperial forces at Nanking.

¹² Li Yuan-hung was chosen vice-president. However, he remained at his post in central China.

The new government recognized the existing condition by accepting the de facto authority in the province, whatever its source, and authorizing it as the temporary agency for provincial administration. North of the Yangtze the provincial authorities followed the leadership of Yuan Shih-kai, while in the rest of the country Parliament was recognized as supreme. Immediately upon the establishment of the government a conflict developed between the executive and the assembly. Yuan Shih-kai was interested mainly in restoring the country to a condition of peace and order; the assembly in asserting the supremacy of Parliament over the executive under the Nanking provisional constitution. Because of this difference in aim the policy of the President appeared to be constructive, and that of Parliament obstructive. Consequently even liberals of the type of Liang Ch'i-Ch'ao¹³ came to support extensions of executive power as opposed to that of Parliament. Conflict both in the provinces and in Peking resulted in triumphs for the President.

Early in 1913 President Yuan began the necessary work of reestablishing civil government in the provinces to replace the control of the military. Had he begun differently he might have conciliated the elements antagonistic to his authority, but he first appointed civil administrators in the provinces where the opposition was in control, thus casting a doubt on the sincerity of his desire to replace military with civil authority except where, by so doing, he could strengthen his own position. On the other hand, it can be argued reasonably that since Parliament had shown an inability to grapple with the problems of the state and to present a constructive policy for their solution, the good of the country demanded that Yuan Shih-kai should not weaken his own control. Such a weakening might well have followed the establishing of civil government in the northern provinces before the President has consolidated his power in the center and south of the country.

An uprising (the Summer Revolution of 1913) followed the appointment of a civil administrator to share the authority of the Tsuchun, or military governor, of Kiangsi province. The

¹³ One of the leaders in the reform movement of 1898.

revolt was easily put down, and it was followed by the virtual dissolution of Parliament through the dissolution of the Kuo Ming or Radical party which was suspected of a share in the revolt. Yuan Shih-kai then proceeded to rule as dictator, although he preserved the forms of constitutional government. The constitutional compact¹⁴ replaced the Nanking constitution as the supreme law of the land. Under it, the President was given the dominating position in the government, the representative body provided for being given no powers which could be used to limit executive control. Yuan, however, was not satisfied with the fact of power, but wished the name also. Consequently an attempt was made to replace the dictatorship in the Republic by the reestablishment of the monarchy with Yuan Shih-kai as Emperor.

With the failure of the monarchy movement and the death of Yuan came a change in the internal struggle. The power of the President had resulted from his control of the leaders of the army, both provincial and national. No one of the Tuchuns was strong enough to dispute his control, and parliamentary government had been impossible because of it. With the removal of his strong hand the northern military party proved to be leaderless. The new President, Li Yuan-hung¹⁵ was a military man but more in sympathy with the southern than the northern point of view. Yuan Shih-kai's chief lieutenant, Tuan Chi-jui, exercised the real executive power through his position as premier, and thus had some claim to leadership. But while a member of the northern military party, Tuan did not occupy a position of undisputed leadership of all elements in the party as had his chief.

¹⁴ Framed by a conference or council set up by the President.

¹⁵ The fact that power in the government was proportioned to the direct control of troops is well illustrated in the career of Li Yuan-hung. While he remained among his soldiery at Wuchang he was a power to be reckoned with, but when he left Wuchang to assume his vice-presidential office in Peking, at the request of the President, he became negligible as a factor in national and provincial politics until his accession to the presidency. He succeeded to that office because to have left the regular line of succession would have precipitated a struggle between contesting factions in the military party.

Parliament came back to Peking after the collapse of the monarchy movement, restored to its full powers and dominating position under the Nanking constitution. The President immediately announced his intention of accepting his constitutional position of practical subordination to the Parliament. For a time it seemed that an orderly evolution toward true parliamentary government would be possible. The chief military leader in the state having been removed, all that the central government had to contend against was a divided military power without an accepted leadership. Singly the military chiefs could not hope to retain the power that had been gained by submission to a common leadership.

That the Tuchuns were no more prepared to acquiesce in parliamentary government than they had been during the rule of Yuan Shih-kai was soon indicated. Lacking the leadership of one man, they resorted to conference action to reach an agreement on a common policy. The first conference was held under the direction of the most notorious of their number, Chang Hsun,¹⁶ at his stronghold, Hsuchow, in the fall of 1916, shortly after the meeting of Parliament. At that time a theoretical "union" of the provinces was effected which was nothing but a league of the military leaders of the northern provinces, formed for the purpose of perpetuating their own power. At this first meeting virtual notice was served on Parliament that it would do well not to forget the presence in China of a power prepared to protect its own interests, by force if necessary, against the civil authority. This threat caused considerable apprehension for a time, but as words were not followed by action the Peking government gradually lost its sense of insecurity.

Until early in 1917 nothing further was heard from the Tuchuns directly, except as military backing enabled Tuan Chi-jui to maintain himself in a struggle against Parliament. In February

¹⁶ Chang Hsun had risen to position from the ranks. In 1911 he was commander-in-chief of the Kiangnan forces. When driven from Nanking by the revolutionists he retreated with his troops up the railroad toward Tientsin. After the abdication he was subsidized by the government to prevent his acting against it. Aside from this subsidy, he maintained himself on the loot taken from Nanking at the time of its evacuation, and by levying tribute on the country.

came the announcement of the extended German submarine warfare. Under the leadership of the United States, China protested against it as a violation of international law. During the next few months the government was forced step by step toward a declaration of war on Germany. The progress of events naturally brought a difference of opinion as to the proper policy to be pursued. This eventually developed into a struggle between the premier and the majority party in Parliament. Finally, in order to show a public opinion supporting his war policy, and also in order to divert attention from the unsatisfactory state of negotiations with the Allied Powers in regard to the conditions of Chinese participation in the war, the premier summoned a conference of the military chiefs to consider the question at issue. This again brought the question of military dictation of policy to the front. The conference declared for the war policy and preparations were made to secure the necessary parliamentary authorization. From all indications, the government had a sufficient majority in Parliament to pass the war bill. But, unfortunately, as Parliament was about to consider the measure, a mob shouting for favorable action, assembled outside the parliamentary building. Parliament took this demonstration as an attempt to force its hand and refused to act. The cabinet, with the exception of the premier, resigned, and Parliament demanded his resignation. He refused to vacate his office voluntarily, but stood his ground until the President dismissed him.

All of this brought an immediate response from the northern militarists. They protested against the dismissal of Tuan, and then demanded the dissolution of Parliament, basing the demand for a dissolution on the unsatisfactory nature of the permanent constitution in the process of formulation by Parliament. The President, at first, refused to dissolve Parliament, so that in order to gain their point several of the Tuchuns declared their provinces "independent" and organized a punitive expedition against Peking. In addition to this a revolutionary government was established in Tientsin. President Li finally weakened to the extent of asking one of the military leaders, Chang Hsun, to

come to Peking to mediate. One result of this mediation was the dissolution of Parliament. Another was the temporary establishment of Chang Hsun as dictator to the central government. His dictatorship resulted in an abortive attempt to bring the Manchu Emperor back to power. The Tuchuns marching on Peking met this move, however, by changing the aim of their punitive expedition from the overthrow of Parliament to the restoration of the Republic and, under the leadership of Tuan Chi-jui, soon effected their object.

The rapid succession of events from February to August, 1917, had resulted in a second dissolution of Parliament; the assumption of control of the central government by the northern militarists; the restoration of Tuan Chi-jui, and the resignation of President Li, who had been forced to flee to the Legation Quarter at the time of Chang Hsun's coup d'état, and who refused to resume his office, giving way formally to the vice-president, General Fêng Kuo-chang. The new President was the leader of one faction of the Peiyang military party.¹⁷ It soon developed that the premier was the leader of another, so that the new régime was not destined to be an harmonious one. The squabbles at Peking, however, were more in the nature of personal contests for power than a struggle between widely different ideas.

During the months following the dissolution of Parliament its members gradually concentrated in the South, finally establishing a constitutional government with headquarters at Canton. The southern provinces supported the Canton government in the struggle that was undertaken against the government in the North, and the country was divided along the same territorial lines that had marked the division of territory between the revolutionists and the Manchus in 1911. As time went on the contest took on more the character of the "outs" to get in, and "ins" to stay there, than a struggle between two principles of government—the civil against the military. The southern

¹⁷General Fêng recognized the danger to his power if he left his troops. For that reason he entered upon extended negotiations to safeguard himself before he would consent to come to Peking.

provinces had developed the same type of military government as that which had assumed control of the North, and the southern militarists began to gain control of the southern government.

The war was not carried on very vigorously by either side, there being frequent attempts to find a basis of agreement satisfactory to all elements. At last a peace conference was convened at Shanghai to settle the struggle. One of the great obstacles to peace was recognized to be the presence of so many men under arms, and the continued interference of the military chiefs in the determination of the policy of the government. One of the propositions brought before the conference by the southern delegation provided for the reduction of troops to the pre-revolutionary number, and the abolition of the office of Tuchun (military governor). These two propositions, if assented to and carried out in good faith by both sides, would have resulted in the disestablishment of the military party both in the North and the South, and would have removed the greatest single obstacle in the way of the progressive development of democratic government in China. The Tuchuns, however, were not prepared to abdicate voluntarily, so that no solution of the question at issue was arrived at, nor have the months from the opening of the conference in December, 1918, to the present time brought any agreement.¹⁸

Not only has it been impossible to reunite the north and the south politically, but factional strife within both the northern and southern governments has brought further complications. So long as the northern military leaders were confronted by the parliamentary party, interest dictated coöperation among themselves. But when they found themselves in undisputed control of the Peking government they began to diverge in their interests. First came the struggle between Tuan Chi-jui, the premier, and the President, Fêng Kuo-chang. After the elimination of Fêng and the election of Hsü Shih-chang as president, the military chiefs grouped themselves in two main parties, the Anhui group under the leadership of Tuan Chi-jui, and the Chihli

¹⁸ In October, 1920, the Kwangsi government returned to Peking allegiance, and the president announced the unification of the country. But renewed activity in the south by Dr. Sun Yat-Sen indicates that unity is not yet attained.

group led by such men as Tsao Kun, the viceroy of Chihli province and Chang Tso-lin, the viceroy of the three Manchurian provinces.

The Anhui group, organized as the Anfu Club (Society for Peace and Blessing)—ostensibly for the purpose of electing Hsü Shih-chang to the presidency—gained and retained control of the Peking government for the year and a half from the time of its organization to July, 1920. The club used its control to perpetuate the power of its members. In order to do this, it necessarily tended to exclude non-Anfu men from participation in the division of the spoils of office. The members of the club financed themselves by repeated borrowings from Japan and, consequently, any movement to oust them from power would naturally have considerable popular support.¹⁹

The antagonism between the two factions in the North brought them to blows in the summer of 1920. The immediate cause of the open rupture seems to have been the refusal of the government to furnish the money necessary to enable the Chihli commanders to pay their troops. The issue was joined when Tuan Chi-jui asked the President to issue a mandate dismissing Tsao Kun and one of his division commanders, Wu Pei-fu. The grounds assigned were that the latter had requested permission to return north with his troops from Hunan province, and when the request had been granted, instead of returning directly the troops had delayed in Honan province.²⁰ Under pressure President Hsü Shih-chang issued the mandate.²¹ General Wu however, led his troops against Peking and, supported by Fêng-tien troops sent to his assistance by General Chang Tso-lin, he was able to force Tuan and the adherents of the Anfu Club to seek shelter at the Japanese legation.

¹⁹ In fact the "student movement" was developed largely because of the reported selling out of the country to Japan. The movement took on the form of a propaganda among the lower classes and in the army for the purpose of enlightening the people as to the true state of affairs both internally and externally. Undoubtedly the student agitation and propaganda had something to do with the easy overthrow of the Anfu Club.

²⁰ For summary of Tuan's statement and request see *Millard's Review*, July 31, 1920, pp. 469-470.

²¹ For the text of the dismissal mandate see *ibid.*

The first reaction to the change was that it meant the elimination of military government, since General Wu proposed the summoning of a national convention to determine all of the points at issue in the state.²² So far, however, the only practical result has been the transfer of power from one military clique to another.

What have been the means by which the Tuchuns have supported themselves and their troops? During the months following the outbreak of the revolution in 1911 the collection of money for the imperial government naturally ceased in the rebellious provinces. Such revenue as was collected was retained in the provincial treasuries, and was used to defray the expenses of provincial administration. Since the military commander controlled the government in many of the provinces, he made the maintenance of his troops a first charge on the revenue. As the allegiance of the troops was largely personal, no matter what his source of supply the commander was regarded as the actual source of revenue by his men. However, even with his direct personal interest in the payment of the troops, the Tuchun because of the inadequacy of the available revenue, continually found himself in financial difficulties. With the unsettled condition of the country it was hard to collect the taxes, and to keep a regular inflow of money. Consequently, when the new government was set up under Yuan Shih-kai, the pay of the soldiers was greatly in arrears.²³ To disband them without full payment would have aroused dissatisfaction and perhaps produced open revolt against the new régime. Furthermore, the commanders refused to demobilize the men without entire payment. From another point of view, demobilization presented a serious problem: that of restoring the men to civil life on such

²² A similar demand came from the students. General Wu became a national hero, because of his attitude. But his chief Tsao Kun, and General Changseem to have refused to accept his proposals, and by himself he did not have sufficient power to demand action.

²³ It may reasonably be argued that it was to the commander's interest to have the pay in arrears since that gave him an additional hold on his men. Of course he had to keep them fed and clothed, and see that they were partly paid in order to prevent a dangerous dissatisfaction.

terms as to enable them to earn a living, and thus prevent them from becoming charges on the community, or being forced into a condition of banditry. Because of lack of financial resource, then, the government was unable to cope with the problem of the military, even if it had had the desire.²⁴

In addition to the payment of the men, there was the necessity of finding enough money to buy off the military leaders who were not prepared to give up their dominating position without some personal recompense. Since the government could not get rid of them, the only thing that could be done, seemingly, was to make use of the Tuchuns and their troops. As has already been pointed out, in most cases their position as the *de facto* provincial governments was legalized, and they were used to maintain peace and order in the provinces until civil authority could be reestablished.²⁵ It was much better, for example, to give General Chang Hsun a title, and interest him in the maintenance of the new government, than to make him its active enemy, especially in view of the fact that he had a sufficient following to maintain himself by force of arms. But, of course, the longer the government delayed its action, the greater grew the difficulty of acting, for the amount of back pay due the soldiers increased, and their leaders became ever less desirous of reaching an agreement by which they would lose their power. Had Yuan Shih-kai not allowed personal ambition to obscure the needs of the state, a gradual transition from a war to a peace basis might have been effected and the Tuchuns have been made the servants of the state instead of its masters. But he used the military power in the province to advance his own ends, precipitating a struggle that brought into definite antagonism the advocates of civil government and his military supporters. If Li Yuan-hung had been a strong personality instead of "an idol with feet of clay" the subordination of the military to the civil

²⁴ One of the purposes to which the "reorganization loan" of 1913 was to be devoted was the disbandment of the troops. However the development of the struggle between Yuan and Parliament prevented the undertaking of the work.

²⁵ As a matter of fact, order was maintained in the provinces under the control of the strong leaders.

power might well have been brought about even as late as 1917. But each successive crisis in national politics worked to strengthen the position of those in control of the provinces, until they were able to establish themselves in absolute control of the national government as well as the government of the provinces.

Since the militarists have had such a large part in the modification of the direction of the constitutional movement in China, it is fair to ask, in conclusion, what use they have made of their power since it has been firmly established. Peace, and a consequent prosperity, have not been brought about in China, as is shown by the continuance of the civil war. It was only the protest of the Powers, and the threat of a refusal of funds from abroad, that brought the northerners into conference at Shanghai. The country as a whole has suspected, with a considerable show of reason, that the central government has been accepting dictation of its policy from Tokyo in return for aid in the form of loans. This suspicion, coupled with the Shantung award made at Paris, has produced a nation-wide protest directed against Japan in the form of a boycott, and against the central government in the form of mob demonstrations, the formation of patriotic societies and threats against the lives of officials suspected of selling out the country to its island neighbor. During the period from 1917 to April, 1920, excluding 1919, there were nineteen separate loans concluded with Japan, totalling yen 281,543,762, some of them for administrative expenses, others ostensibly for industrial development. In 1919 alone twenty-two loans were made, principally from Japan. Some of these sums were obtained without definite security, but many were secured by provincial revenues or were made in return for mining or other concessions. Little of the money received has actually been used for the development of the country, either politically or economically. It is, of course, impossible to say how much of it has gone to line the pockets of the officials of the civil and military services, but certainly a large share of it has been used to maintain the military power in control of China and to provide retiring allowances for officials.²⁶

²⁶ See *Millard's Review* for February 5 and 19, on the influence of the association of Chinese bankers in beginning a reform of governmental methods.

A writer in *Millard's Review* says of the militarists that they "are not militaristic and autocratic in the philosophical, fanatical and semi-religious sense in which their contemporaries in Germany and Japan are obsessed. Nor are they united as the vassals of a common demi-god or Emperor. They have no dreams of *Weltpolitik*, neither are they possessed of the idea that they are ordained of God to rule the earth. They pursue their policy for perfectly selfish and unromantic reasons—for *fuh-kuei*, wealth and position, of which *kuei*, or position, is merely the temporary stepping stone to the ultimate ambition, *fuh*, which is measured in dollars and taels. They are mutual friends when it pays to be friends, meeting with the 'glad' hand and a dagger up the sleeve, intriguing with one another, cliquing together or selling one another out, hesitating in fear and uncertainty, always with a foresight as far as the end of their noses and a policy as variable as the Peking winds. . . . There is no settled policy on anything in Peking today, except that of getting as much private gain out of the business of government as possible. To this one principle the majority of officials wholeheartedly and unreservedly subscribe."

It is to this government for personal gain that China has come in the course of her endeavor to shake off an alien autocracy and stand with the democratic states of the world. New forces, however, have been set in motion recently, which may ultimately weaken the hold of the military chiefs on the state. A patriotic wave has swept the country as a result of the Far Eastern settlement at Paris; a national patriotism is in the process of development, and this new spirit, under proper leadership, is directing its action, not alone against illegitimate foreign interests in China, but against the military octopus which has enveloped the political and administrative machinery of the state.

LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

Governors' Messages, 1921. The meetings of forty state legislatures this year is an event of considerable political importance but as usual they have attracted little attention except locally in each of the states concerned. Yet these sessions afford an unequalled opportunity for a review of great public questions; they throw light on those local conditions, political, social and economic, which ultimately determine national opinion. Legislative leadership is apt to be diffused, obscure or uncertain, working in committee rooms, hotel lobbies, or party headquarters, so that it is difficult without an intensive study of a mass of reports and public documents, or local investigation, to learn what the states are doing or planning to do. For this reason, the biennial or inaugural messages of the governors constitute the best source of information. Furthermore in spite of much talk about "executive usurpation" and "dictatorship," the governor still supplies much of the necessary leadership and initiative in state affairs.

Many of the questions discussed are of course, largely of local importance. Governor Allen recommends that Kansas engage in the manufacture of brick for highway construction; Governor McMaster advises a state cement plant for South Dakota; Governor Goodrich urges a revival of the Indiana sterilization law; Governor San Souci again urges the abolition of property qualifications for the suffrage in Rhode Island. All the states have local problems of institutional management, highway construction, education, or public welfare. There are others however so broad in scope and so general in character, that they are of national interest.

Four years ago the striking feature of the governors' messages was the critical attitude toward the form of state government. Two years ago most attention was given to state services during the war and the problems of reconstruction. There is a close connection between this year's problems and those of the last biennium. Reconstruction problems have proved decidedly different from those anticipated two years ago, but the effects of the war are everywhere apparent.

Economy and Administrative Reform. Governor Miller's comments on the imperative need of economy in New York are repeated in one form or another in practically every state. There is a nation wide recognition of the fact which Governor Kendall of Iowa points out in his inaugural that "while the people are compelled to practice a judicious frugality themselves, they are in no mood to tolerate a prodigal extravagance in those they have selected to represent them." Several governors comment on the necessity of dropping the war-time habit of thinking of public expenditures in terms of billions and turning to the more prosaic task of saving thousands. Governor Lake of Connecticut, commenting on the vicious results following the widespread overestimate of the possibilities of taxation, urges that the state adopt a consistent policy of refusing new projects calling for further expenditures, keeping existing enterprises within the narrowest possible limits, a more business-like administration of institutions and departments, consolidation of offices and elimination of useless places.

Administrative reform is making headway. Governor Hart of Washington gives the chief place in his message to an administrative code based on that successfully put in operation in Illinois and several other states. Governor Davis of Ohio refers to the economy and greater efficiency produced by the Idaho consolidation and reorganization measures of 1919. In several other states, notably Oregon, Kansas, and West Virginia, immediate reforms of the same sort are urged together with improved budgetary procedure.

The introduction of economy is however far from being a simple matter. Coupled with such recommendations one finds comment on overcrowded classrooms and inadequate facilities at the state universities, on the resignation of professors, teachers, and public officials because of inadequate salaries, on growing costs of institutional upkeep. In both Oregon and California the people are reminded that by use of the initiative they have placed great burdens on their own shoulders and must be prepared to accept the responsibility.

Great bond issues for highways and soldiers bonuses were voted at the November elections in several states. There is unremitting pressure for expenditure on all sorts of welfare schemes, better housing, home ownership, conservation, social insurance, and a score of others. Perhaps Governor Mechem of New Mexico goes to the heart of the problem when he asks, "Does the present high cost of government produce benefits in preportion to its cost? Further, are those benefits enjoyed by the great majority of the people?" "More and more,"

says Governor Hartness of Vermont, "we find governmental action being swayed by the expression of various groups through their official representatives." Economy programs will certainly encounter plenty of opposition from interested parties.

Taxation. A natural complement of the economy problem is taxation, and here again there is practical unanimity on the part of the governors that new sources of revenue are imperatively needed. Governor Edwards of New Jersey is almost alone in his statement that the state need seek no new revenues at the present time. There is a general agreement that real estate can not carry any further burdens. In more than a dozen states the income tax is urged. Governor Carey of Wyoming remarks that in spite of its unpopularity due to the way in which it has been administered by the national government, it will have to be generally adopted. The demand appears in such diverse and widely separated states as New Hampshire and New Mexico, South Carolina and Montana. Heavier inheritance taxes are urged in several states.

In the mining states the perennial question of mine taxation draws unusual attention, opinion generally favoring some form of tonnage tax as opposed to the old type of property tax. In the oil-producing states the governors urge a more scientific form of taxation that will increase revenues from this source. In West Virginia and Pennsylvania, the governors urge a bill-board tax both for revenue and as a means of checking a growing nuisance. The retiring governor of Iowa recommends much heavier assessment of "vacant, idle, real property, for the burden all such property imposes in retarding commercial progress." Governor Blaine urges that the Wisconsin income tax exemptions be made the same as the national and that all returns be opened to the public as a check on evasion. Governor Hart advises meeting the cost of the soldiers bonus by a poll tax of five dollars on all persons over twenty-one. Apparently the pinch of direct taxation is only beginning.

Law Enforcement. Another phase of the war aftermath receives general attention, the wave of lawlessness and crime. From the governors' standpoint it is largely an administrative problem. There is comment on the need of greater state coöperation in making the Eighteenth Amendment effective, but the bootlegger and moonshiner are not the only problems. Governor after governor comments on the indifference and incompetence of sheriffs and county attorneys who wink at law breaking. Governor Carey declares that Wyoming

loses large sums due from automobile licenses because local officers are unwilling to offend their friends by enforcing the law. The same is true in many states of far more serious offenses. The governor can only carry out his constitutional duty of seeing the laws faithfully executed if he has adequate control of local peace officers or a properly organized state constabulary. The governors of Pennsylvania and California go further and point out the need for an improved administration of criminal justice to supplement the work of executive officers. Governor Cornwell gives an interesting history of the disorders which necessitated the use of United States troops in West Virginia and urges the establishment of an effective force of public officers to cope with such emergencies. He roundly condemns the use of private armed forces by corporations, an opinion which is fully shared by Governor Dixon of Montana.

Direct Primaries. With the exception of administrative reform and consolidation, problems of governmental structure and functioning are not generally considered this year. Governor Blaine's dissertation on the virtues of the initiative, referendum and recall seems somewhat anomalous. The direct primary, however, receives considerable and usually unflattering comment. "Time and experience" declares Governor Hart of Washington "have demonstrated that the direct primary is not the rose strewn pathway that leads to the political Utopia dreamed by its sponsors," and he proceeds to describe the "demoralization of responsible party organizations," the "unfair advantage to minority parties and groups" with the advice that the state convention be restored. It is "absurd and politically dishonest" declares Governor Preus of Minnesota. "It defeats the very purpose of its original design by reason of the pernicious practices that have grown up and are seemingly incurable," is the opinion of Governor Robertson of Oklahoma. A few governors are somewhat less drastic in their condemnation and suggest modification rather than abolition, Governor Cox of Massachusetts pointing out that many of the fundamental weaknesses of the primary would be eliminated by the adoption of the short ballot.

Blue Sky Laws. An interesting reflection of recent business history is seen in the widespread demand for "blue sky laws," a demand found in all sections of the country. Governor Davis points to "the avalanche of worthless securities" foisted on the people of Ohio, and Governor Kendall to the "saturnalia of stock jobbery" and the inadequate laws which made Iowa "a rendezvous for every crooked exploiter

in the Mississippi valley." Governor Cox declares that the people of Massachusetts are robbed of thirty millions annually by purchase of fraudulent securities and that the distrust and resentment caused thereby constitute a menace to Americanization and good citizenship. In Kansas, Rhode Island, New Mexico, Idaho and Indiana the story is the same.

Marketing. The depression of agricultural prices at the present time is naturally the subject of discussion especially in the western states. While there are two or three censures on the conduct of the federal reserve board, there is a general recognition of the ineffectiveness of legislation in meeting such conditions. "The power of California to deal with economic problems is limited by inflexible economic laws," says Governor Stephens, and this limitation seems to be generally accepted. Better marketing supervision, the removal of any legal obstacles to coöperative farmer organizations, or their active encouragement, uniform package and inspection laws, and similar methods are urged. Governor Preus advises that Minnesota farmers establish their own distributing exchanges for the collective sale of their produce or that they organize stock corporations, with seats in the exchanges of the terminal markets; but condemns any form of state ownership. Governor McMaster of South Dakota advises a similar policy.

Labor Problems. The attitude toward labor problems is somewhat the same, most of the governors contenting themselves with calling attention to the need of a liberal spirit in settling disputes and to the mutual interest of labor and capital in maintaining industrial peace. Governor Allen defends the Kansas industrial relations court and the creation of a similar tribunal is advised by the governors of a few other states.

Miscellaneous. There are various other topics of interest: the removal of any remaining political or legal disabilities from women; the alien land laws of the Pacific states; protests against losing control of intrastate railroad regulation; problems of highway administration. In spite of loss of power and prestige, the state is still a unit of tremendous power with vast possibilities of good or ill.

Governor Boyle in his farewell message after nine years in the governorship of Nevada, declares the experience of the country during the war has exploded the theory that governmental functions could be indefinitely expanded, that we "now enjoy a clearer vision of the true functions of the government," and that "its long arm should not reach uninvited into every conceivable phase of civic, domestic, commercial

and industrial life. Its purse should not hang on the door of the Capitol to subsidize every conceivable form of public and private experiment and activity."

This may be true but an examination of state projects offers little hope that taxes will be reduced. Probably the chief activity of the next decade will have to be directed toward seeing that the state gets its money's worth in goods or services. Governor Boyle proceeds to enlarge on the proper functions of the state—education, administration of justice, orderly adjustment of differences among discordant elements, care of defectives, the preservation of the citizens' rights to "a fair field and no favor," and the meeting of the cost by just tax laws "designed for revenue only and not to force political and economic reforms." Even this is a formidable program, and sooner or later there is likely to be a searching inquiry as to whether the present state governmental machinery can meet the demands. Political improvements have usually resulted in this country from collapse and demoralization rather than from rational, carefully planned alterations. The national budget system is a product of war waste and direct taxation. There are likely to be some similar developments in the states which will be still more far reaching.

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Illinois Constitutional Convention. The Illinois constitutional convention met in Springfield on January 6, 1920. It remained in session from January 6 to July 7, 1920; and after a recess until September 21, and another from that date to November 8, it was again in session from November 8 to December 9, when it again adjourned until September 6, 1921. The convention, under the terms of the Constitution of 1870, was composed of 102 members, two from each of fifty-one senatorial districts. Several members have been lost by death, and a number of others by election or appointment to other offices. When the convention reassembles on September 6, 1921, its membership will therefore be reduced by probably ten or twelve.

The convention has agreed in committee of the whole upon a number of articles to form parts of a new constitution, although the articles agreed upon for the most part contemplate relatively slight changes from the existing constitutional provisions. Such matters as have been agreed upon by the committee of the whole have in most cases to pass second reading in the convention itself, and to receive final approval (after third reading) as parts of a complete constitution.

The convention has tentatively agreed upon the following matters, involving substantial departures from the constitution of 1870: (1) A number of technical changes were agreed upon which would make the process of legislation somewhat less cumbersome.

(2) The Chicago-Cook County article of the constitution was tentatively agreed upon, which would give a possibility of consolidation of numerous and complex governmental bodies within the largest city and county of the state. The proposed Chicago-Cook County article would also confer large powers of municipal home rule upon the city of Chicago.

(3) A proposed revision of the revenue article was agreed upon which would permit an income tax on income derived from intangible property, in lieu of a property tax thereon. The proposal would also permit other income taxes, under certain limitations as to progression and as to exemptions. In case a general income tax is to be levied, this proposal would permit the deduction of taxes levied by valuation from the tax levied on income derived from the same property. The revenue article as tentatively adopted would also permit additional bond issues for the purpose of financing income-producing public utilities under certain rather strict limitations, which seek to compel the utility to bear all of the interest to be paid upon such bonds and the payment of the principal at maturity.

(4) A proposed judicial article was tentatively approved in the committee of the whole which would consolidate certain courts both in Cook County and in the rest of the state, and simplify the judicial organization of the state. This proposal provides for the appointment (rather than the election) of justices of the peace within Cook County outside of the city of Chicago, and for the payment of justices of the peace by salaries rather than by fees. Justices of the peace within the city of Chicago have already been abolished under the powers conferred by the constitutional amendment of 1904 with reference to that city.

The constitutional convention was distinctly opposed to any form of the initiative and referendum, and a rather conservative proposal for the initiative and referendum submitted to it received little support. The convention was also opposed to short ballot proposals in state government, but has tentatively adopted a county government article authorizing the general assembly to provide optional, alternative laws on county government. Through such alternative systems it would be possible to authorize an optional short ballot system of

county government, to be adopted by such counties as might desire such a plan.

The subject of Cook County representation was tentatively determined upon before the recess of the convention in July, 1920, but this decision was reconsidered, and the subject came up again when the convention reassembled in November. At the November session the convention adopted a plan by which Cook County should be permanently limited to nineteen out of fifty-seven senators, and to less than one-half of the total number of representatives, irrespective of its actual population. Cook County now has nearly one-half of the total population of the state. The issue of Cook County representation is one which has led to the continuance of the convention's session from time to time, and to the recess until September, 1921. The Cook County delegates to the convention have been willing to submit to the limitation of Cook County representation in one of the two houses, but have been unwilling to submit to a permanent limitation in both houses. In July, 1920, it seemed that the convention would fall to pieces because of this issue, and a recess was then taken largely for this reason. When the convention reassembled in November, 1920, the situation was no more satisfactory than in July.

The only important issue upon which some tentative decision had not been reached in committee of the whole before the recess in December, 1920, concerned the method of making future amendments to the constitution, or a complete revision of the constitution. The convention's committee upon this subject had not reported at the time of the recess in December, 1920.

Proposals adopted by the convention in committee of the whole are referred to the convention's committee on phraseology and style for consideration and report back in revised form as individual proposals. The revised proposal then comes again to the constitutional convention, and after second reading is referred again to the committee on phraseology and style for such changes as may be necessary when each individual proposal becomes part of a complete new constitution. The committee on phraseology and style has made several reports upon matters referred to it by the convention, and several such reports were adopted by the convention before its recess in December, 1920.

It is impossible to know at the present time what the outcome of the Illinois constitutional convention may be. If upon its reassembling in September, 1921, the deadlock over Cook County representation should persist, the work of the convention is likely to end in complete

failure; and under such conditions it may be doubted whether the convention will ever submit its proposals to the people for adoption or rejection. On the other hand, if the convention should return in September, 1921, with a satisfactory agreement upon the subject of Cook County representation, it is possible that a proposed constitution may be submitted containing a number of desirable changes from the existing constitution; but not dealing as fully as it was hoped with many problems (such as that of revenue) for which the convention was primarily assembled.

Declaratory Judgments. A new field for judicial action in this country has been opened by recent legislation with respect to declaratory judgments. Declaratory judgments have been long used in England and have served useful and desirable purposes, but in this country the movement for such an extended use of the courts is relatively new.

The New Jersey chancery act of 1915 provides that: "Subject to rules, any person claiming a right cognizable in a court of equity, under a deed, will or other written instrument, may apply for the determination of any question of construction thereof, in so far as the same affect such right, and for a declaration of the rights of the persons interested."

Florida in 1919 passed an act similar to but broader in scope than the New Jersey legislation of 1915. Michigan and Wisconsin, also in 1919, enacted laws going much further than the legislation of New Jersey and Florida. The Michigan legislation is the broader in scope. The Michigan statute provided that:

"No action or proceeding in any court of record shall be open to objection on the ground that a merely declaratory judgment, decree or order is sought thereby, and the court may make binding declarations of rights whether any consequential relief is or could be claimed or not, including the determination, at the instance of anyone claiming to be interested under a deed, will or other written instrument, of any question of construction arising under the instrument and a declaration of the rights of the parties interested."

The Michigan statute, although brief, also provided in the broadest manner for the settlement of issues presented to the court in proceedings so authorized. The Wisconsin act of 1919 is briefer and narrower in character than that of Michigan and provides:

"Equitable actions to obtain declaratory relief may be brought and maintained in the circuit court and in matters of which the supreme

court has original jurisdiction in the supreme court, and it shall be no objection to the maintenance of such an action that no consequential relief is sought or can be granted if it appears that substantial doubt or controversy exists as to the rights or duties of parties, and that either public or private interests will be materially promoted by a declaration of the right or duty in advance of any actual or threatened invasion of right or default in duty. The judgment rendered in such an action shall bind all the parties thereto and be conclusive and final as to the rights and duties involved."

The New York Civil Practice Act, enacted in 1920, provides by section 473 that the supreme court shall have power in any action or proceeding "to declare rights and other legal relations on request for such declaration, whether or not further relief is or could be claimed, and such declaration shall have the force of a final judgment."

Early in 1921 the Kansas legislature passed a declaratory judgment statute almost identical with the Michigan act,¹ which was signed by the governor on February 21.

Recent American legislation regarding declaratory judgments is directly copied from England. The declaratory judgment in England dates from legislation of 1850 and 1852, but the longest step toward the common use of such judgments was taken by rule of the English Supreme Court of Judicature in 1883.

The statutes enacted in New Jersey, Florida, Michigan and Wisconsin and New York do not involve the only cases or the earliest ones in which some use has been made of declaratory judgments in this country. Illinois added to her chancery act in 1911 a provision that: "The court may hear and determine bills to construe wills, notwithstanding no trust or question of trust or other questions are involved therein." A number of proceedings authorized by statute in the several states have some of the characteristics of declaratory judgments.

One of the earliest provisions for what may perhaps be termed a declaratory judgment in this country is that involved in a New Jersey act of 1873. This act provides that within one year after an act or joint resolution has been filed with the secretary of state, if "the governor or the person administering the government shall have reason to believe that any such law or joint resolution was not duly passed by both houses of the legislature, or duly approved as required by the constitution of this state, he may, in his discretion, direct the attorney

¹ 19 *Michigan Law Review*, 537.

general to present a petition to the supreme court of this state, setting forth the facts and circumstances, and praying that the said law or joint resolution may be decreed to be null and void." Two or more citizens are also authorized to present a petition to the court, in the same manner as is the attorney general when directed by the governor.²

In seven states of this country, state constitutions require the highest court to give advisory opinions under certain conditions to other departments of the state government. Constitutional provisions in the seven states vary as to the conditions under which opinions may be required and as to who may ask for opinions. The theory of advisory opinions originally was that the court should to some extent serve as a legal advisor upon important questions, and that such opinions should not be controlling as judgments of the court. There has, however, been a growing tendency in the courts themselves to regard such opinions as authoritative; and to the extent that they are regarded as authoritative, they become substantially equivalent to declaratory judgments.³

The declaratory judgment is of course different from advisory opinions, as it is also from the decision of a moot issue by a court. The declaratory judgment is a final one binding on the parties, as to the issue presented. The decision of a moot case may be regarded as a dictum; while an advisory opinion is still in theory a mere legal opinion as to the law without reference to an actual dispute, having no binding effect upon future litigation. As a matter of fact, however, the advisory opinion has come to be regarded by the courts as of more or less binding determination of the law.

In the case of *Anway v. Grand Rapids Railway Company*⁴ the supreme court of Michigan declared invalid the declaratory judgments act of that state. The majority of the court took the view that the issue presented for a declaratory judgment was a moot issue, and that the law did not provide for the exercise of what was properly a judicial function, both because of the moot character of the question presented, and because the determination by the court in making a declaratory judgment was not to be executed by the court itself. The minority

² *New Jersey Compiled Statutes* (1910), IV, p. 4978. See in re "An Act to amend an act entitled 'An Act concerning public utilities,'" 83 *New Jersey Law*, 303 (1912).

³ For a full review of advisory opinions, see Ellingwood, *Departmental Co-operation in State Government*.

⁴ 211 Mich. 592; 179 N. W. 350 (1920); 19 *Michigan Law Review*, 86.

more properly took the view that the issue to be presented under the declaratory judgment act was limited to the bona fide issue of law between parties (upon which their legal rights depended), and that a judgment thereunder when rendered would be capable of subsequent judicial enforcement, if either party acted contrary thereto. The movement for declaratory judgment, may, however, be to some extent suspended by the adverse decision in the Michigan case, although in this case the merits of the argument seem to be rather distinctly with the minority.

Divided Legislative Sessions in Oregon. Several years before the adoption of the divided legislative session plan by constitutional amendment in California in 1911, similar plans had been advocated in Oregon. Resolutions for constitutional amendment to put such a plan into effect failed of adoption at several later sessions of the legislature. In 1920 an amendment for the purpose, submitted to the voters through the initiative by the state taxpayers' league, was defeated at the election by a large majority.

It provided for the division of the regular biennial session of the legislature into two periods, approximately two months apart; the first, of not more than forty days, for the introduction and consideration of measures, final action being permitted only in case of governmental appropriations; the second, of not more than ten days, for final action on the tentatively approved measures continued from the first period, amendment being permitted only by a four-fifths vote of the members elected to each house. There were additional matters included in the proposed amendment, and it conflicted more or less with another submitted at the same election.

Supporters of the divided session urged that it would allow members of the legislature to "study and digest" the enormous mass of proposed legislation, in contrast with present conditions under which congestion of business and hasty and ill-considered action invariably prevail; that similar scrutiny by administrative officers would also be thus facilitated; that, best of all, through discussion by the press and by conferences of members and their constituents public opinion could thus be brought to bear upon all legislative action. "It is, in short, the taking of the people into confidence of the legislature and offering them a chance to say which bills they want passed and which they do not want passed." "In effect the plan would do much the same thing that is done by the referendum without the delay and trouble

incident to the application of the referendum," and thus reduce the necessity for resort to the referendum.

There was little active opposition to the measure. But the objection was made that congestion of business in the legislature would be increased by its adoption through the natural tendency to give tentative approval to anything submitted at the first period, since final action was reserved for the second; that the expense of legislation would be increased through double mileage and otherwise; that there was no chance for emergency measures at the second period; that the large majority required for amendments would establish a dictatorship of the small minority; that members would be busy with their private affairs during the interim and would give no time to public discussion of legislation; that if they did give up their time to such action the cost of their "campaign" would be great; that anyway the people would not avail themselves of opportunity afforded for acquaintance with proposed legislation; that "special interests" would benefit from the increased opportunities for "lobbying" with individual members of the legislature, to the detriment of the public interests.

Perhaps confusion caused by conflicting measures accounts for the defeat of the proposition as much as anything else, unless the general tendency to vote against everything at the election, good, bad, and indifferent. In fact only one of the eleven measures submitted was approved by the voters.

JAMES D. BARNETT.

University of Oregon.

Compulsory Voting in Oregon. For many years, in Oregon, as elsewhere, "the apathy of the voters," "the waning interest in elections," has been the cause of lamentation, and, as elsewhere, various remedies for this evil have been suggested. "Statesmen are groping for a plan to cure the non-voting habit, because they realize that non-voting is at the bottom of many governmental ills." Especially since 1913 some penalty for failure to vote has been urged. Something like a "compulsory voting" act was passed by the legislature in 1915, providing, as it does, that one who fails to vote at least once in two years cannot vote again without going to the trouble involved in reregistration or in "swearing in" his vote at the election. The legislature of 1919 submitted a constitutional amendment to the voters empowering the legislature to provide for both compulsory registration and compulsory voting, but the measure was defeated by a large majority at

the election of 1920. Fines or temporary disfranchisement were the penalties generally anticipated.

"Were it possible to drag everybody to the polls, no way is possible to prevent the deposit of blank ballots by those who do not wish to vote." The proposal seemed to contain "much of the ancient proposition of compulsory drinking by the horse, after leading him to the unappreciated trough." The contrary view, however, appears to be more in accord with the facts. "It is a peculiarity of humankind that duty is often shirked, but when driven to it the shirkers make good more often than not." It is so with other affairs in life. Why is it not so with the ballot? But it was contended that nothing is to be gained by driving the "shirkers" to act. Failure to vote is due to indifference as to results, and as a rule this indifference is the product of ignorance of issues. There is nothing gained by compelling men and women to help arbitrate issues of which they have no understanding. However, there is certainly at least as much reason for the opposite view. "The stay-at-homes as a rule lack neither intelligence nor morals. They are usually either indolent or thoughtless. It is not just the vicious who refuse to vote, but those who do not take their franchise rights seriously, those who permit others to run the government, and then spend their spare moments protesting because it is not run to suit them. The votes of many of these people are worth getting." To whatever extent the public may generally have been influenced by such considerations, certainly the main reason for the defeat of the proposal was the invasion of personal liberty believed to be involved. "Compulsory voting without police espionage is wholly impracticable." "Who wants to be herded to the polls by the police?" In view of current events, it is very significant that the measure was endorsed by organized labor.

Two "admirable substitutes" for compulsory voting have been advocated—decrease in the frequency of elections and in the length of the ballot. These have, however, received but little favor.

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University of Oregon.

FOREIGN GOVERNMENTS AND POLITICS

EDITED BY FREDERIC A. OGG

University of Wisconsin

Organization of Public Employees. Bills defining the relation of public officials and employees to the state have recently been presented to the legislatures of Great Britain, France, and the United States. Great Britain has already enacted an important statute regulating the status of the police forces of England, Wales, and Scotland.¹ The general intent of the law is to establish an official police organization, known as the Police Federation; to forbid its alliance with any trade union or other body outside the police service; and to furnish opportunity to make its influence felt in matters relating to the government and conditions of service of the police force.

The organization of the Police Federation, as defined in a schedule to the act, includes all members of the several police forces below the rank of superintendent. Each local force constitutes a branch of the federation, and elects in each case three branch boards, one representing the constables, another the sergeants, and a third the inspectors. The boards number from five to seven, and may sit together as one board. In addition to the branch organization, the law provides for annual conferences in which each branch is represented by from one to four delegates, each of whom must be a member of the police force which he represents. Each of the three grades of the service represented in the federation holds its own conference, and selects from among its number a central committee of six (two selected respectively by the metropolitan police force, by the county forces, and by the borough forces). These three central committees may sit together and may be summoned to sit as a joint council by the home secretary. Finally, provision is made for holding, on the initiative of the home secretary, police councils for the consideration of general questions affecting police, at which the joint central committee or its deputation may be invited to meet representatives of the police authorities, chief officers of police, and superintendents.

¹ 9 and 10, George V, c. 46 (1919).

Elections to these various branches and conferences are carried out under the terms of the Ballot Act of 1872. The branch boards are limited to holding four quarterly meetings, each lasting one day, unless the consent of the chief officer of police be obtained for an additional meeting "for any special purpose." The annual meeting of the central conference is limited to not more than two days; each central committee may hold meetings once in two months, each lasting one day, but additional meetings may be held with the consent of the home secretary. Membership in the police force is a necessary qualification for election to any of these positions. Special provision is made for the organization and representation of the metropolitan police force.

The powers and functions of the federation are described in guarded language. Article 1 of the statute creates the federation "for the purpose of enabling the members of the police forces to consider and bring to the notice of the police authorities and the home secretary all the matters affecting their welfare and efficiency, other than questions of discipline and promotion affecting individuals." A draft of any regulation proposed to be made by the home secretary or the secretary for Scotland concerning the government, mutual aid, pay, allowances, pensions, clothing, expenses and conditions of service of the police forces is required to be submitted to a council consisting of the joint central committee or its deputation together with representatives of the chief officers of police and police authorities selected for the purpose by the home secretary; and before making the regulation, the secretaries must consider any representations made by the council. Any branch board may submit representations to the chief officer of police, to the police authority, or to the home secretary. The central committees are also authorized to submit representations in writing to the home secretary and in matters of importance the secretary will be prepared to give any committee or deputation a personal hearing.

Certain prohibitions form an integral part of the law. The federation and every branch must be entirely independent of, and unassociated with, any body of persons outside the public service. No member of the police force may become or remain a member of any trade union or of any other association having for its objects to control and influence the pay, pensions or conditions of service of any police force. Any person attempting to cause disaffection among the members of the police force is subject to penalties ranging up to two years imprisonment or fifty pounds fine.

Meanwhile preparations are being made for applying the principle of the Whitley council to the British civil service.² A joint committee recommended in May, 1919, the establishment of a national council of fifty-four, including four secretaries, one half to be appointed by the government, the other half to be elected by various staff associations. The national council is to be supplemented by departmental councils consisting of equal numbers of representatives of the government and the civil service, and in some cases by works or office councils. The object and functions of the national council are proposed to be "to secure the greatest measure of coöperation between the state in its capacity as employer, and the general body of civil servants in matters affecting the civil service, with a view to increased efficiency in the public service combined with the well-being of the employed; to provide machinery for dealing with grievances, and generally to bring together the experience and different points of view of representatives of the administrative, clerical, and manipulative staff." This general statement is made more specific in other sections of the report, in which are suggested *inter alia* as proper subjects for inclusion in the competence of the national council the determination of the general principles governing conditions of the service, e.g. recruitment, hours, promotions, discipline, tenure, remuneration and superannuation; provision for utilizing the ideas and experience of the staff; and encouragement of further education of civil servants and their training in higher administration and organization. It is recommended that the decisions of the council shall be arrived at by agreement between the two sides, shall be reported to the cabinet, and thereupon shall become operative.

It is proposed to give the departmental council authority to discuss any promotion or disciplinary action in regard to which it is alleged that the principles of promotion accepted by the national council have been violated.

An important bill was introduced in the French Chamber of Deputies, June 1, 1920, formulating the public relations of civil servants. A summary of the *exposé des motifs* and a brief analysis of the bill follow.³ The *exposé des motifs* states as the fundamental proposition on which the bill rests that the general interests of the public service

² See Report of the National Provisional Joint Committee on the application of the Whitley report to the administrative departments of the civil service. Cmd 198, 1919. This may be found in *Good Government*, Vol. 36, 158.

³ See *Revue du Droit Public et de la Science Politique en France et à l'étranger*, Vol. 37, No. 2, pp. 314-324 and references on p. 314.

determine the duties which the official must fulfill and set the limits to the rights which it is proper to grant him. Four questions are handled in the proposed legislation; the question of recruitment and promotion of officers, discipline, the organization of the service, and finally associations of the *fonctionnaires*.

With respect to recruitment, the bill undertakes to eliminate arbitrary and personal appointments by insisting on a régime of examinations and a probationary period. As for promotion, the civil servant is to be given the benefit of a *conseil d'avancement*; in matters of discipline, a disciplinary council with right of appeal in certain cases to a superior administrative council, on all of which the employee has representation. But this safeguard falls in case of concerted cessation of work. On the matter of strikes the *exposé* takes the ground that a strike of *fonctionnaires* cannot be permitted, and that the pretended analogies drawn from the relation of master and servant cannot be invoked. Public service is differentiated from private employment on the ground that there is no collaboration in making a labor contract; that the status of each office is fixed by the law and that only the representatives of the nation can regulate the situation of the office holder.

The bill recognizes the right of officials to form associations but limits the right to set up unions of associations, and reserves the right of the government to dissolve the association besides holding it to a corporate civil responsibility (*pour solidairement et civilment responsable*).

These principles are elaborated in the text of the bill, the analysis of which can best proceed by a statement of the administrative machinery set up and a description of its functions. The *projet* provides in the first instance an administrative council composed one third of *fonctionnaires* of the highest grade taken in the order of seniority; one third of representatives elected by the personnel engaged in the service; and one third appointed by the minister from without the service. The council holds office for four years. It may be consulted upon all measures "*d'ordre législatif ou réglementaire*" concerning the organization and functioning of the services, and may express wishes upon these subjects. This council sits both as a council for promotion and a council for discipline, under special rules. Every *fonctionnaire* is declared to be responsible to his superior for his official acts and in case of fault may be subjected to the following penalties: first degree, admonition; second degree, (1) removal from promotion list, (2) disciplinary transfer, (3) reduction in grade; third degree, (1) reduction in grade, (2)

placing on inactive list, (3) dismissal. Penalties of the second and third degree must be referred to the council of discipline, although the punishment is imposed by the minister after hearing the council's opinion. In case of a penalty of the third degree, a right of appeal to the superior administrative council exists.

This superior council is to consist, according to the proposed legislation, of three councillors of state, in ordinary service, chosen by the council of state; three councillors of the court of cassation, chosen by the court; three members chosen by the ensemble of the delegates of the civil servants in the administrative councils attached to the central departments; and three members taken from outside the public service by the president of the council. In addition to the function indicated above, the superior administrative council may be consulted upon all administrative or legislative measures relating to several public services, and may express wishes upon these subjects.

The French law fails to establish an official association of public employees, but admits the qualified right of employees to organize, for the study and defense of their corporate interests, and of the interests of the service to which they belong. They can pursue no political end (the precise meaning of which the bill fails to make clear). All combination with any organization outside the service is forbidden. All officials of the association and of their unions with one another must be *fonctionnaires* in active service. The associations are authorized to acquaint the heads of service and the ministers with all questions concerning the professional interests of their members; they are empowered moreover to present to the competent jurisdiction every fact or measure which appears harmful to their corporate interests, and in particular they can request the annulment by the council of state of measures concerning the profession alleged to be in excess of power or an abuse of power. Penalties ranging from 16 to 10,000 francs and imprisonment from six days to two years, together with dissolution of the association are provided for violation of the terms of the proposed law.

No *fonctionnaire* lacking a "legitimate excuse" can cease his service without having obtained the consent of his superior officer. The administrative council cannot intervene in case of concerted cessation of work to delay the imposition of penalties. Every *fonctionnaire* whose professional incompetence is ascertained can be relieved of duty after the opinion of the administrative council is had.

In the United States indications exist that similar action may soon be under active discussion. President Steward of the National Association of Federal Employees has urged the reorganization of the civil service commission, to be composed in the future of an equal number of representatives of the government, of the public, and of the civil service employees.⁴ The congressional joint committee on reclassification of salaries proposes the establishment of a civil service advisory council to be composed of twelve members, two representatives selected by the employees, from their own number, from each of the three main groups of services (manual, clerical, and professional), one of each group being a man, and one a woman; and six representatives of the administrative staff appointed by the President, all holding office for one year.⁵ The functions of the council suggested are to consider suggested changes in the civil service rules or regulations affecting the personnel of the service and other matters on which the advice of the council may be of assistance. The council is to have authority to offer to the civil service commission recommendations on any question coming under the jurisdiction of the commission. It is proposed to authorize the council to establish personnel committees in the departmental units and to consider personnel questions affecting more than one department in response to requests coming from the personnel committees. The joint reclassification committee urge this proposal in order to improve the morale and the efficiency of the service, and to foster the good will necessary for effective service. "The government may not properly fail to take into account the best interests and the best development of its employees who are engaged in working out its purposes and plans."

L. D. WHITE.

University of Chicago.

Presidential Election in Chile. Arturo Alessandri, whose inauguration as president of Chile took place on December 23, entered upon his five-year term as the victor in a political campaign which attracted attention beyond his own country. He is the first member of the Radical party, and the first representative of the middle class, to attain the Chilean presidency. His friends assert, too, that he is the first and only "dry" South American president.

⁴ Annual Report, Civil Service Reform League, 1919, p. 28.

⁵ Report of the Congressional Joint Commission on Reclassification of Salaries, House Document 686, 66 Cong., 2d sess., pp. 130-132.

There are seven political parties in Chile: Conservative, Liberal, Democratic, Nationalist, Radical, Liberal Democratic and Socialist. The Conservative party, made up of the land-owners and the aristocratic families, derives additional strength because it is the Catholic party. The Liberals, favoring moderate reforms, and the Democrats, representing the numerically small group of artisans and workingmen, have never taken an anti-clerical position. But the Radicals, in addition to an aggressive program of social and economic reform, bitterly oppose the interference of the Church in state affairs. The Nationalists consist of the personal followers of Montt, a former president, and the Liberal Democrats are the followers of Balmaceda. The Balmacedistas have, for several administrations, exercised a powerful influence in the Chilean Congress.

Alessandri was supported by the Radicals, the Democrats, most of the Liberals, and a part of the Liberal Democrats; these four groups constituting the Liberal Alliance. His opponent, Luis Barros Borgoño, a distinguished Liberal, had the support of the Unionistas, or Coalition, consisting of the Conservatives, the Nationalists, a few Liberals, and some of the Liberal Democrats. The Socialists supported neither Alessandri nor Borgoño, although in the later part of the campaign, if not earlier, their sympathies were with Alessandri, who was looked upon as the friend of the common people. Borgoño, on the other hand, had not only the support of the Church and the oligarchical groups, but the friendship of the out-going administration. The sympathies of the army, however, were said to be with Alessandri.

The Chilean constitution provides that the President shall be chosen by an electoral college whose three hundred and fifty-four members are elected by popular vote. At the election of the electors on June 25, 1920, the returns indicated a very close race, and when the electors met on July 25, the result of their balloting was 179 for Alessandri and 174 for Borgoño. This was not necessarily final, as the constitution gives the Congress power to decide on the validity of the vote. The Borgoño group brought charges of fraud and proceeded to contest the election, and the Alessandri faction feared that the influence of the administration would be used to throw the election to Borgoño. Fortunately for the political peace of Chile, it was finally agreed to submit the case to a specially constituted Court of Honor, whose decision, while having no legal status or constitutional authority, all parties agreed to accept. This Court, made up of two ex-vice-presidents, the president of the Senate, the president of the Chamber of Deputies,

and three other persons chosen by these four, decided by a vote of five to two that the vote showed 177 ballots for Alessandri and 176 for Borgono, with one vote annulled. This decision was quietly accepted by the Borgono followers, and Chile's "Hayes-Tilden" contest was at an end. The calmness with which the losers in this bitter contest accepted the decision indicates that Chile is no longer a state in which a presidential election is likely to result in open revolution.

The new president assumed office on a platform which promised a revision of the constitution of 1833, the abrogation of the parliamentary system and the return to the presidential form of government, greater autonomy for the provinces, and heavy taxes upon private wealth. The president has stated that he favors the settlement of the vexatious boundary dispute with Peru in accordance with the treaty of Ancon.

Alessandri's friends are most optimistic concerning his administration. They expect him to restore Chile's somewhat disordered finances, and to take a stand for international good-will in South America. They believe that his frequently quoted expressions, "*Pese a quien pesara, sere presidente*," (Weigh upon whom it may, I will be president), and "*El odio es esteril, solo el amor es fecundo*," (Hate is sterile, only love is fruitful), are indications of the spirit in which he will perform the duties of his office.

B. A. ARNESON.

Ohio Wesleyan University.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

University of Wisconsin

In order to fix the place of meeting of the American Political Science Association in 1921 with some reference to the plans of kindred organizations, the executive council has postponed a decision until early summer. The place selected will be announced in the August issue of the REVIEW. The chairman of the committee on program is Professor Charles G. Fenwick, of Bryn Mawr College.

An up-to-date typewritten list of the members of the American Political Science Association, with addresses, has been prepared. Copies may be obtained from the secretary-treasurer at one dollar each.

Since January 1 the following names have been added to the membership list of the association:

Alexander, Howard B., Delaware College, Newark, Del.
Allen, Eleanor Wyllys, Cambridge, Mass.
Alley, John, University of Oklahoma, Norman, Okla.
Bailey, Warren G., Chicago, Ill.
Barnes, Harry E., Clark University, Worcester, Mass.
Barr, George A., Joliet, Ill.
Baxter, James P., Colorado Springs, Col.
Beckman, R. O., Chicago, Ill.
Bovingdon, John, Boston, Mass.
Bradley, Phillips, Amherst College, Amherst, Mass.
Bradley Polytechnic Institute, Peoria, Ill.
Brigham Young University Library, Provo, Utah.
Bruce, Harold R., Dartmouth College, Hanover, N. H.
Bucknell University Library, Lewisburg, Pa.
Carneiro, Dr. Mario, Rio de Janeiro, Brazil.
Chapman, C. C., Portland, Ore.
Civic Library, Montreal, P. Q.
Coleman, C. B., Allegheny College, Meadville, Pa.
Corliss, James C., San Francisco, Cal.

- Davis, Leita, Sapulpa, Okla.
Davis, Norman H., New York, N. Y.
Dearborn Publishing Co., Dearborn, Mich.
Fowler, William E., Washington, D. C.
Green, Clarence, Butler, Ind.
Grubbs, O. F., Pittsburg, Kan.
Hall, Mary A., New York, N. Y.
Harley, Professor J., University of Southern California, Los Angeles, Cal.
Holly, William H., Chicago, Ill.
Hubbard, Clifford C., Williamstown, Mass.
Hume and Walker, Santiago de Chile.
Irons, Mrs. Margaret H., Providence, R. I.
Kerwin, Jerome G., Columbia University, New York, N. Y.
Ketcham, Earle, University of Michigan, Ann Arbor, Mich.
Kieffer, G. L., New York, N. Y.
Lake Forest College Library, Lake Forest, Ill.
Leigh, Robert D., New York, N. Y.
Lustig, Abraham A., Washington, D. C.
Lynch, C. Stewart, Wilmington, Del.
Mattern, Johannes, Johns Hopkins University, Baltimore, Md.
May, Samuel C., Dartmouth College, Hanover, N. H.
McGuire, C. E., Washington, D. C.
McLaren, W. W., Williams College, Williamstown, Mass.
Miller, John H., San Francisco, Cal.
Montague Branch of Brooklyn Public Library, Brooklyn, N. Y.
New, Chester W., McMaster University, Toronto, Ont.
New York Bureau of Municipal Research, New York, N. Y.
North Dakota Agricultural College, Agricultural College, N. D.
Ohara Institute of Social Research, Osaka, Japan
Ostrom, Henry E., Indianapolis, Ind.
Perkins, Clarence, University of North Dakota, Grand Forks, N. D.
Perkins, Dexter, Rochester, N. Y.
Randolph, Bessie C., Richmond, Va.
Reber, Hugh J., Madison, Wis.
Reed, Thomas H., University of California, Berkeley, Cal.
Richardson, Lula M., Port Deposit, Md.
Robertson, James A., Washington, D. C.
Robinson, G. C., University of Wisconsin, Madison, Wis.
Scully, W. R., Washington, D. C.
Sherwell, G. A., Washington, D. C.
Wager, Paul, George School, Pa.
Waller, James B., Jr., Chicago, Ill.
Westcott, Mrs. Minnie, Farmington, Iowa
White, Howard, Urbana, Ill.
Wilson, Lyman P., Washington, D. C.
Winslow, Dorothy, Concord, Mass.
Wirt, B. F., Youngstown, Ohio.

Mr. Chester Rowell, recently elected a member of the executive council of the American Political Science Association, has resigned as a member of the United States shipping board and has returned to California as a member of the state railroad commission.

Professor Raymond G. Gettell, of Amherst College, will give courses in political theory and in American government at the summer session of the University of California.

Professor Quincy Wright, of the University of Minnesota, will give courses in international law and American diplomatic history at the summer session of Columbia University.

Professor Arthur N. Holcombe, of Harvard University, is to give two courses in political science during the summer quarter at Stanford University.

Professor C. D. Allin, of the University of Minnesota, recently delivered addresses on current British politics at the University of Nebraska, the University of Colorado, and Colorado College, under the auspices of the Institute of International Education.

Professor Lindsay Rogers, of the University of Virginia, has resigned in order to accept a professorship of political science at Columbia University.

Professor Edward S. Corwin, of Princeton University, has been granted a leave of absence for the second semester and is spending the time in England.

The American City Bureau has arranged to hold a summer session for the secretaries in the fourteen western states at Stanford University during the first part of August.

In connection with his work as director of the bureau for government research at Minnesota, Professor W. M. Anderson has prepared an interesting pamphlet, entitled *Minneapolis Charter Problems*, which has been published by the Woman's Club of Minneapolis, and an outline of the government of Minnesota, which has been published by the Minnesota Republican woman's state executive committee.

Professor Edgar Dawson has resumed his courses at Hunter College after a year spent, mainly in California, in study of the problems of instruction in civics. On his way east he held conferences on this subject at a number of universities. The results of his investigations will appear in a bulletin of the United States bureau of education.

Professor George E. Howard, of the University of Nebraska, has been granted a leave of absence for the year 1921-22. He will devote himself to writing.

Professor John M. Mathews, of the University of Illinois, will give courses in political science at the University of Nebraska during the second term of the coming summer session.

Dr. William S. Carpenter, recently on the staff of the Guaranty Trust Company, has been made an instructor in politics at Princeton University.

Professor W. W. Willoughby, of the Johns Hopkins University, has been given leave of absence for the remainder of the academic year, and has gone for a six months trip to Australia, the Dutch East Indies, and Siam. He will return in time to take up his university work at the beginning of the next academic year. During his absence Baron S. A. Korff, formerly of the University of Helsingfors, will lecture in the department of political science at Johns Hopkins on parliamentary government in Europe.

Mr. Edward C. Smith, instructor in political science at Lafayette College, has accepted a position in the political science department of New York University.

Dr. Charles McCarthy, director of the Wisconsin Legislative Reference Library, and a member of the executive council of the American Political Science Association, died at Phoenix, Arizona, on March 26.

Mr. C. G. Hoag, honorary secretary of the American proportional representation league, has returned from a European tour during which he conferred with leaders of the proportional representation movement in England, Belgium, Denmark, Sweden, Germany, and other lands.

Mr. Russell Ramsey, assistant secretary of the Philadelphia bureau of municipal research, has been made secretary of the bureau, succeeding Mr. Edward T. Paxton who has resigned to take up full-time research duties on the staff. Mr. Ramsey was formerly assistant secretary of the national municipal league.

Mr. Dorsey Hyde, Jr., formerly director of the New York Municipal Reference Library, and more recently in charge of the department of economic research of the Packard Motor Company, has become assistant director of the civics department of the Chamber of Commerce of the United States at Washington, D. C.

The joint committee on administrative reorganization of the Ohio general assembly has issued a numerous series of pamphlet reports and brief surveys relating to the state administration and plans for reorganization in that state. A large number of these were the work of W. H. Allen, of the Institute for Public Service, mainly on educational institutions and problems. C. E. Rightor and G. C. Cummins each prepared a number of reports. C. B. Galbreath made a study of administrative reorganization in other states. A summary of recommendations was written by D. C. Sowers.

Mr. George E. Frazer and Mr. Walter F. Dodd, who took part in the Illinois investigation and assisted in framing the administrative code for that state, have been retained to assist in formulating an administrative code for Ohio that will incorporate the important changes recommended by the above noted surveys.

Mr. Frank Dilnot, formerly editor of the *London Globe*, and representative in America for the *London Daily Chronicle*, gave a short series of lectures at the University of Illinois during April, on the revolution in England, Lloyd-George, and Czecho-Slovakia. He has also given lectures at several other universities in the United States.

Professor Roy Malcom, of the department of political science at the University of Southern California, has accepted the position of civic director of the Los Angeles city club.

Dr. L. S. Rowe, president of the American Political Science Association, recently delivered a lecture at Georgetown University on "America as a Factor in International Relations."

Professor James W. Garner, of the University of Illinois, is delivering the James Hazen Hyde lectures at some eight or ten provincial universities in France. He has also given six lectures in the faculty of law in the University of Paris on American political ideas and institutions. Three of these lectures were repeated at the *École Libre des Sciences Politiques*; and he has delivered six lectures on international law before the new *École Internationale du Droit International* which opened at the University of Paris in January under the auspices of Messrs. Fauchille, Alvarez, and De Lapradelle. During November and December Professor Garner visited Cambridge University, England, and delivered a lecture on American foreign policy. Following the visit to England he returned to Belgium and delivered lectures on American diplomacy at the University of Brussels and at the University of Ghent.

Lectures on civil rights are being given this semester, on the Fred Morgan Kirby Foundation, at Lafayette College, as follows: first month, on ideals of government, by Mr. Herbert A. Gibbons; second month, on constitutional aspects of civil rights, by Professor Francis N. Thorpe, of the University of Pittsburgh; third month, on the historical development of the American government, by Professor J. S. Bassett, of Smith College; fourth month, on the development of civil rights and political liberty in Great Britain, by Professor Thomas F. Moran, of Purdue University.

The Norman Wait Harris lectures for 1921 were given at Northwestern University in March by Sir Arthur Steel-Maitland, formerly joint parliamentary secretary for the British foreign office and board of trade, in charge of the department of overseas trade. The subject of the six lectures was the relation of the state to industry and commerce, with special reference to foreign trade.

The Pennsylvania commission on constitutional amendment, created in 1919, has completed its work and has submitted to the legislature a carefully prepared draft of a revised constitution, containing over one hundred and thirty changes in the present instrument. It remains for the legislature to decide whether to submit to the electorate the question of calling a convention. An account of the commission's work will be found in the March issue of the *National Municipal Review*.

The twenty-fifth annual meeting of the American Academy of Political and Social Science will be held in Philadelphia on May 13-14. The general topic will be the place of the United States in a world organization for the maintenance of peace. The topics for the successive sessions are: the record of accomplishment of the existing League of Nations; the Monroe doctrine; effect of America's participation in a world organization on the doctrine; the possibility of disarmament by international agreement; the treatment of backward peoples in a world organization; the function of international courts and the means of enforcing their decisions; and the essentials of an effective world organization.

The second annual meeting of the Southwestern Political Science Association was held at Austin, Texas, March 24-26, 1921. Subjects taken up at the several sessions included state and local taxation, reorganization of state governments, land problems in the Southwest, and the relations between the United States and Mexico. Professor A. N. Holcombé, of Harvard University, gave two addresses. The officers for the ensuing year are: president, George Vaughn, Little Rock, Ark.; first vice-president, George B. Dealey, Dallas, Tex.; second vice-president, F. F. Blatchly, University of Oklahoma; third vice-president, D. Y. Thomas, University of Arkansas; secretary-treasurer, W. C. Binkley, University of Texas. Professor C. G. Haines, of the University of Texas, was re-elected managing editor of the *Quarterly*. The Association will meet in 1922 at the University of Oklahoma.

The twelfth annual meeting of the American Society of International Law was held at the Shoreham Hotel, Washington, D. C., April 27-30. The general topic for consideration was the advancement of international law, and it was taken up under four subdivisions previously assigned to sub-committees of the society's general committee on this subject. The meeting opened with an address by Hon. Elihu Root, president of the society; and papers were read by Hon. Manoel de Oliveira Lima, Mr. James Brown Scott, Professors George G. Wilson, Charles C. Hyde, Jesse S. Reeves, and others. The chairmen of the four sub-committees are: Messrs. Charles N. Gregory, Harry Pratt Judson, Simeon E. Baldwin, and Paul S. Reinsch.

The Institute for Government Research has recently added materially to its staff and has correspondingly increased the scope of its

work. It is giving special attention to the preparation of volumes to appear in its series of "Service Monographs of the United States Government," two volumes of which were issued prior to the entrance of the United States into the war. It now has in preparation monographs dealing with the following services: bureau of war risk insurance, federal board for vocational education, bureau of public health, bureau of foreign and domestic commerce, United States shipping board, and bureau of mines. These services have been selected for immediate treatment because questions are likely to arise in connection with them in the studies now being made on reorganization of the administrative branch of the government.

A detailed manuscript study on administrative reorganization has also been completed, copies of which will be furnished to the members of the joint congressional committee, the President, and others who have to concern themselves with this problem.

A large amount of work is under way on the problems of budgetary technique. Special studies are also being made on the problems of personnel administration in connection with the proposals of the recent joint congressional committee on reclassification of salaries.

The most recent publication of the Institute is a volume entitled: *Principles of Government Accounting and Reporting*, by Francis Oakey.

Continental newspapers announce the early opening in Berlin of a *Deutsche Hochschule für Politik*. The plan springs mainly from the conviction that Germany suffered before and during the war from the lack of capable and trained political leaders. In general, the *École Libre des Sciences Politiques* in Paris is to be taken as a model; and it is hoped that through its teaching and research work, and by providing a common working center for the diffusion of civic education, the school may contribute substantially to the rehabilitation of Germany. Unlike the universities, the new school is not to be a state institution preparing for definite professional careers, but rather a free higher school, open without examination to students of all ages and of every special class. Among the teachers who have been announced are ministers of state Simons, Heinze, Scholz, Koch, and Groener; ex-ministers Delbrück, A. Müller, Schiffer, David, and Wissel; Professors Delbrück, Meinecke, Hoetzsch, Troelsch, Goetz, Sombart, Beyerle, and Radbruch; and among leaders in business and public affairs, Rohrbach, Hardorff, Rathenau, Roeseler, Sernig, Gertrud Bäumer, Buhlmann, and others.

BOOK REVIEWS

EDITED BY W. B. MUNRO

Harvard University

A. History of Political Theories: From Rousseau to Spencer. By W. A. DUNNING. (New York: The Macmillan Company. 1920. Pp. x, 446.)

In the writing of a history of political theories the functions of the historian and of the political scientist are combined, and if these are mixed in proper proportion there is shown the extent to which the theories dealt with have, upon the one hand, been the product of objective political conditions, and, upon the other hand, been influential in determining the course of historical events. To be completely satisfying, then, a history of political ideas needs not only to give an analysis of the writings of political philosophers, but to show the abstract principles that have been implicit in the policies and institutions of states. Professor Dunning in his three volumes, the last of which has just appeared, has joined the qualifications of the historian to those of the political scientist, and has exhibited in an admirable manner the way in which the treatises which he has analyzed were related to each other and to the political and intellectual conditions of the times in which they were produced. He has not, however, made any considerable effort to determine the political ideas which, though implicit in political practices, did not find explicit statement in the published works of philosophers. Thus his history is, predominantly, one of political speculative writings rather than an analysis of political institutions and policies in order to ascertain the abstract principles embedded in them.

Within the four hundred and twenty pages of his text, Professor Dunning reviews the writings of between forty and fifty authors. This necessarily means that he is able to give but a very few pages to each. It also means that some writers whom many would consider not unimportant have received no, or at most only incidental, mention. The closing of the study, as stated in the preface, with the year 1880, perhaps explains why no attention is given to the writings of T. H. Green (Green's lectures on "The Nature of Political Obligation" were deliv-

ered in 1879-1880, but not published until later); but it is a little difficult to explain why no reference should have been made to FitzJames Stephen's *Liberty, Equality and Fraternity*; why William Godwin should have received a bare two pages; why jurists like Ihering and Gierke should have been passed over; and why American writers should have been given such short shrift. There are, of course, references to Jefferson, John Adams, and Calhoun, but no attempt is made to present even a summary of their political ideas. And it is interesting to note that Lieber obtains no notice at all, although Dr. Dunning is himself Lieber Professor at Columbia University.

However, these omissions are pointed to rather by way of regret than of criticism, for within the limits which Dr. Dunning has set for himself, he has done all that any one could do in the way of stating in a few, lucid sentences the substance of often complicated doctrines. Many of these summaries or characterizations are so admirable in content, and entertaining in mode of statement, that the reviewer regrets that the limits of space make it impossible to give illustrations of the literary merits of the entire volume.

The mode of presentation is a combination of the chronological with the topical: chronology governs when this is possible, but the extent to which the writings reviewed are grouped under subject headings is shown by the chapter titles: "Rousseau," "The Rise of Economic and Juristic Science," "The American and French Revolution," "The German Idealists," "Theories of Conservatism and Reaction," "The English Utilitarians," "Theories of Constitutional Government," "The Theory and Practice of Nationalism," and "Societarian Political Theory."

Rousseau alone is honored with a chapter all to himself—forty-four pages being devoted to this extraordinary man. Here Professor Dunning's literary *esprit* is so strong as to lead him, in the reviewer's judgment, to be unjust to his subject—or shall we say, victim. Paradoxes, superfluous metaphysics, fancies, follies and quibbles, resounding judgments, are some of the faults ascribed to the Genevese Frenchman. Vaughan's scholarly introduction to his edition of Rousseau's *Political Writings* is not referred to, and it is believed that if Professor Dunning had given more attention to the positions taken in that essay a somewhat juster estimate of Rousseau's theories would have been given. Professor Dunning appears at his best in his chapter dealing with nationalism. The reviewer knows of no work in which this principle is, within reasonable compass, discussed with such sanity and acumen.

If one may again express a regret rather than a criticism it is that Professor Dunning should have restricted his concluding chapter, "The General Course of Political Thinking," to a bare fourteen pages. For we know that political literature would have been enriched if he had given us a discussion in a hundred or more pages of the general movements of political thought during the twenty-three centuries which his three volumes have covered. As it is he contents himself, if not his avid readers, with considering the question whether these centuries of speculation have led to any real advances in political theory. The two main topics which have been discussed, he says, have been the organization and institutions in which political authority has been manifested, and the rational or ethical justification of this authority. As to the first, he is of the opinion that the history of theories has shown little variation. As to the second, that the Greeks of the fourth century B. C. propounded substantially all the solutions that have been since advanced. Only the settings have been different. During the nineteenth century the effort has been to adjust the conceptions of authority and liberty so as to escape the dilemma of the anarchists. "Anarchistic individualism was preached by Sophists and Cynics; constitutionalism by Aristotle and the other conservative upholders of the *nomoi*; nationalism is but the theory of the city-state writ large; socialitarianism has never been more completely formulated than by Plato. In twenty-three centuries the movement of thought has but swung a full circle. Such is the general lesson of the history of political theories. It is not different from the lesson of history in respect to all the other varieties of theory by which men have sought to absolve the basic problems of their earthly existence." With this judgment Professor Dunning concludes his work.

W. W. WILLOUGHBY.

Johns Hopkins University.

Freedom of Speech. By ZECHARIAH CHAFEE, Jr. (New York: Harcourt Brace and Howe. 1920. Pp. 431.)

The importance of this volume is evidenced by the controversy which has followed its publication. It deals with the way in which the law and traditions of free speech were interpreted during and after the war in the enforcement of the Espionage Act, the censorship exercised by the postmaster general and the deportation policy of the administration. The writer's exposition of the evolution of the constitutional

guarantees of free speech is wholly admirable and the book shows indefatigable industry and a remarkable breadth of historical citation.

As an authoritative work the volume suffers because it lacks the impersonal tone and occasionally betrays the temperament of a partisan—albeit one of high-minded and generous impulses. As a contemporaneous record of events, it stands by itself and is of permanent value. Written too near in point of time to the events portrayed, there is an occasional lack of accuracy due to sources of information more or less adventitious and unreliable. Many, for example, will question the statement of facts given by the author for the cases of Debs, Mrs. Stokes, Goldstein, Doe, and other conspicuous offenders against the espionage law. Lawyers will defend the Supreme Court against the author's charge that it was more tender in protection of capital in the steel trust and stock dividend cases than it was in preserving the right of free speech. Both lawyers and laymen will doubt the wisdom of the author's conclusions that the Supreme Court and most of the district courts wrongly interpreted the law of evidence applicable to questions of interest as well as the intent which animated Congress in enacting certain clauses of the Espionage Act.

The author scarcely gives sufficient importance to the cardinal fact that throughout the war we had in existence and were trying to enforce a conscription act. Whether men were prosecuted for expressing their private views, or whether they were prosecuted for actually counseling disobedience to the conscription act, can only be determined by an intensive study of all the cases tried, facilities for which are not yet available. It cannot be true that the department of justice made this act a dragnet for pacifists, because it was Attorney General Gregory's refusal to countenance indiscriminate prosecutions which resulted in the enactment of so many sweeping and fanatical sedition laws by the western states. The fact that there were only about six hundred persons convicted under the federal Espionage Act—about six in a million—scarcely supports the charge of wholesale suppression of free speech by Attorney General Gregory.

The criticism of the tyrannical censorship exercised by the postmaster general is essentially sound in principle, although here again the fundamental trouble was with the statute which conferred on that official the unreviewable power to interpret the Espionage Act according to his own standards. His strong and trenchant criticism of the deportation policies of the administration seems abundantly supported by the cases cited.

The handicaps in writing a book of this kind at the present time are due partly to the difficulty of assuming an entirely impersonal point of view, and the difficulty of obtaining full and accurate statements of fact. It is probable that the commentator of the future will attribute the acts here criticized, so far as they were wrong, not so much to the zeal and tyranny of the officials administering the law as to the war emotion and hysteria steadily growing through the country. The causes of this phenomena and the resulting complaisance with which the country at large viewed the deportation raids and the unseating of the socialist legislators, were not the result of the zeal of tyrannical officials. An inquiry into the sources of this phenomena is now a need of prime importance.

When all is said, however, the book is of great value and is serving a most useful public purpose in stimulating discussion of the always important topics of free speech.

JOHN LORD O'BRIAN.

Buffalo, N. Y.

The Equality of States in International Law. By EDWIN DEWITT DICKINSON. (Cambridge: Harvard University Press. 1920. Pp. xiii, 424. Harvard Studies in Jurisprudence. Vol. III.)

Any appraisal of Professor Dickinson's long-awaited work must begin with a recognition of the tremendous labor which has evidently gone into its making. Quite apart from the wide and deep research attested by the list of materials consulted, there is everywhere manifest an intellectual effort to get at the truth which contrasts strongly with some of the lighter work of the war period in political science.

This striving after final truth leads to a closeness of style and sometimes to an involved form of expression which have their disadvantages. Thus, two sentences in the preface are unintelligible at first reading, and "foundational" is used for "fundamental" at one point, with an obvious effort to be scrupulously exact in expression but with an unhappy effect on the reader's attention. All this is not very serious but deserves mention in the hope that a labored theme need not mean a labored style and manner of writing.

In the substance of the work the profession owes a debt to Professor Dickinson on several grounds. It is very worth while to have it made clear that the doctrine of state equality is derived chiefly from the philosophy of the law of nature, but only in part from that source, and

to know that the hard-headed positivists have found some ground for such a doctrine (pp. 94, 334). It is worth while to have it clearly pointed out that legal equality and political equality differ fundamentally in character and in validity both as ideals and as rules or principles of the actual law (pp. 280, 332). It is especially worth while to have it emphatically stated that progress in the science and art of international law and relations, and particularly in international organization and government, can only be made when the *de facto* inequalities of states are given *de jure* recognition (pp. 278, 333). The small states may balk and delay the march of events, but if facts are facts and men are in any degree candid they must eventually recognize that Haiti and France are entitled to widely divergent measures of political power in international government, albeit they are entitled to equal opportunity to vindicate such rights as in substance they actually possess. On these essential points what is said in these pages is not only sound but conclusive.

There are, however, one or more points on which discussion might be raised. The use made of the phrases "capacity for rights" and "legal capacity" appears to be faulty. They are used to mean, not legal capacity for acquiring rights, nor yet legal capacity for enjoying acquired rights, but capacity or measure of legal rights acquired, and it is therefore maintained that states are unequal in their capacities for rights (pp. 149, 335). That is sound enough, of course, but as here used, it is no disagreement with Carnazza Amari, whose text is cited as the clearest and most satisfactory statement of the meaning of equality in the law of nations. It also leaves one to conclude that the states are equal in the rights which they have acquired. Now in the sense that they are equal in the procedural right to enjoy such substantive rights as they have acquired this is true. But this is precisely the sense in which the concept of "legal capacity" was used by Carnazza Amari, for he speaks of the equal inviolability of states in the exercise of acquired rights (p. 108). And it is false in its suggestion that in the measure of their rights they are equal, as the author would be the first to insist.

Secondly, it does not appear that state inequalities due to constitutional limitations on state procedure are inequalities "in international law." They may have "consequences" in international politics, diplomacy, and government, and they must be "taken into account," of course, in those fields, but they are not inequalities by virtue of international law. So far as these facts are concerned it would still be possible to say that in international law all states are equal.

Finally, one might wish that the author had found room for the consideration of certain facts of economic and social history which determine legal inequalities among the states, or are influenced by them. On one hand, we might have some study of the de facto bases of political inequality among states in international representative bodies. On the other hand, it might be noted that a doctrine of equality of substantive legal rights sedulously preached tends to induce that state of de facto equality upon which alone it could be finally justified, first by denying tactical advantages to the present possessors of superior numbers, wealth, and area, and secondly by encouraging political and legal devolution within the larger states. The principle of equality between Haiti and France is based on a sort of mysticism and superstition which deals in state entities in an abstract world, and which ends by making Frenchmen and Haitians very unequal, man for man, contrary to the premises of the naturalistic philosophy from which that principle sets out. But it mitigates the de facto superiority of France as against Haiti, and it may lead to the granting of votes to French colonies in international organizations, as it has in the Postal Union, a step which is ultimately calculated to produce a greater degree of state equality in the world.

Raising these questions does not mean that Professor Dickinson has not produced a valuable work. Indeed, as he himself points out, the chief thing to be done at this stage of the study was to open up the subject and discover its difficulties. This task of analysis and preliminary study Professor Dickinson has done in a most searching and comprehensive way.

PITMAN B. POTTER.

University of Wisconsin.

Treatise on International Law, with an Introductory Essay on the Definition and Nature of the Laws of Human Conduct. By ROLAND R. FOULKE of the Philadelphia Bar. (Philadelphia: J. C. Winton Company. 1920. 2 Vols. Pp. lxxxviii, 1000.)

According to the statement of the preface "This book has been written in an attempt to clear away some of the many obscurities and misconceptions which pervade the subject of international law and which are not only discouraging to the student but irritating to the mature reader. . . . The author does not pretend to have any

more than scraped the surface, but hopes he has succeeded in a more logical arrangement than that commonly found in the writers."

As a preliminary to the treatment of the subject matter of international law the author devotes 178 pages to a socio-philosophical discussion of the definition and nature of law in general. In this discussion the author declares "the word 'state' will be used as meaning a community of men existing from within, and exerting its power by its own inherent force" (sec. 18). Later he says "A state is a community of men exerting its power as an organization by its own inherent force and not by a delegation of power from any other organization" (sec. 42). "Pirates are an organization of men having the power from nowhere but within, and, although not recognized, they bear all the marks of a state" (sec. 43), and again "They [pirates] therefore constitute a state without territory" (sec. 287). The author considers those who hold that "a body of pirates is not a state because of the fact that it is not recognized by the world and is organized for evil purposes" as in error. While this conclusion might be deduced from the definition of "state" which the author gives, it justifies grave doubt as to the validity of the definition.

The definition of international law is somewhat involved. "International law, therefore, is the conception in terms of order, of the conduct of independent states as influenced by external and internal factors, from which external factors are excluded the forces of nature and external political power, which we may call the jural conception of the conduct" (sec. 108).

Under the heading "Substantive International Law" which covers about four hundred pages there are some assertions which will scarcely be accepted; such as: "If the treaty is made purely for the event of hostilities, it may or may not be observed by the belligerent parties. This is entirely a matter in their discretion, and it frequently happens that warring powers will disregard treaties which they think are not to their advantage in carrying on hostilities" (sec. 390). While this last clause is true, this disregard of the treaty by a state does not relieve the state of its obligation. A treaty in regard to hostilities is no more "entirely a matter in their discretion" than any other treaty. The fact of the difference in remedy does not destroy the obligation to observe the treaty.

Such general statements are made as "In short, war is simply bilateral force" (sec. 602), "A unilateral act of force therefore is not war, although it may lead to war" (sec. 640). This was not the opinion

at the Second Hague Conference, and at the present time, following a declaration, there may be a condition of war in the legal sense without any act of force.

Throughout this work on international law there is, as stated by the author, an attempt to get away from the accepted method of treatment. New terms are introduced or old terms are used with new meanings. For the word "right" is generally substituted the word "power;" for the word "subject," "citizen," for "national" is substituted the word "member" and the like. Such changes may receive general sanction later, but the drift of opinion and international practice seems to be in the opposite direction.

There are some errors of statement, perhaps due to proofreading, such as that submarine cables between a belligerent and neutral country may be cut "in waters of belligerent or in the waters of the neutral or in the open sea" (p. 333, note 7) or in the title of section 981 "Neutral exporting company," when the text refers to "exporting neutral country."

The number of cases cited is comparatively few. The number of continental writers cited is also few. The citations from American and British writers are numerous. In these citations sometimes supporting and sometimes opposing the author's position there is no prejudice but an attempt to present the material fairly. The extent of these notes and citations covering many pages makes the volumes serviceable, whether or not one always agrees with the text. There is a good index and a valuable table of international persons. Probably the common arrangement of material in books of international law is not entirely satisfactory to any writer upon the subject, but he must weigh the advantages of the departure from the somewhat well beaten path of conventional method against nonconformity. The disadvantages of departure in this book seem to outweigh the advantages.

The author should receive recognition for his courage in breaking away from the conventional method of treatment of the subject of international law, because by such attempts the value of methods may be measured and what is good in the old become more secure and what is bad be superseded.

G. G. WILSON.

Harvard University.

The United States and Latin America. By JOHN HOLLADAY LATANÉ (New York: Doubleday, Page and Company, 1920, Pp. 346.).

Pan-Americanism—Its Beginnings. By JOSEPH BYRNE LOCKEY (New York: The Macmillan Company, 1920, Pp. 503.)

These are two very timely and useful books on the diplomatic relations of the United States with the Hispanic republics of America. The volume by Professor Latané is designed primarily for college classes; Mr. Lockey's monograph will interest the more advanced and technical student.

Two-thirds of the former is reprinted with alterations from an earlier work entitled *The Diplomatic Relations of the United States and Spanish America* (1900). It includes a most excellent introductory chapter on the Spanish American wars of independence, the best short account within the reviewer's knowledge, followed by chapters on the recognition of the Spanish American republics and the diplomacy of the United States with regard to Cuba, the Panama Canal, the Maximilian adventure in Mexico, and the Castro régime in Venezuela. The last three chapters which are entirely new, discuss the intervention of the United States in the Caribbean, the vicissitudes of the Pan-American idea in the nineteenth century, and the more recent developments of the Monroe Doctrine. The narrative, while not over-vivacious in style, is judical, well-balanced, and in general trustworthy. As a college textbook, in a field where good texts are lamentably few, the book will be warmly welcomed, and it should appeal to a wide circle of other readers as well.

In his preface, Mr. Lockey divides the history of Pan-Americanism into three periods: the first extending to 1830, characterized by a "tendency toward continental solidarity;" a second covering the decades to the close of the Civil War, displaying "an opposite tendency towards particularism and distrust;" and a third continuing to the present time, marked by a revival of earlier efforts toward inter-American coöperation. This volume covers only the earliest period. Its scope is conditioned by the meaning of Pan-Americanism as formulated in the opening chapter, a "moral union of American states founded upon a body of principles growing out of the common struggle for independence." These "principles" are defined as those of political independence, community of political ideals, territorial integrity, law instead of force, nonintervention, equality, and coöperation.

Interpreting his theme in the very broadest sense, the author traverses almost the entire field of American international relations, including much that the reviewer believes not strictly germane to the subject. The mode of presentation is somewhat confusing, especially for the lay reader, and in matters of emphasis the author is not always happy. The best chapters are the sixth, on Hispanic America and the Monroe Doctrine, and the three dealing with the Panama Congress. As a contribution to the history of this cherished design of Bolívar's the volume is the most complete and satisfactory that has so far appeared. The sources upon which the study is based, although confined almost entirely to printed materials, cover a wide range, and the bibliography of eighteen pages is very useful.

C. H. HARING.

Yale University.

Das österreichische Staats- und Reichsproblem. Geschichtliche Darstellung der inneren Politik der habsburgischen Monarchie von 1848 bis zum Untergang des Reiches. I Band. Der dynastische Reichsgedanke und die Entfaltung des Problems bis zur Verkündigung der Reichsverfassung von 1861. 1 Teil: Darstellung. 2 Teil: Excurse und Anmerkungen. By JOSEF REDLICH. (Leipzig: Der neue Geist Verlag/Reinhold. 1920. Pp. 1 Teil, xvi, 816; 2 Teil, 258).

The projected work, of which the volume under review is the first, will doubtless long stand as the authoritative history of the Habsburg monarchy from 1848 until its downfall at the close of the great war. The author, whose treatises on *The Procedure of the House of Commons*, and *Local Government in England* are well known to students of English government, possesses exceptional qualifications for the task which he has undertaken. A professor in the University of Vienna and for a number of years a member of the Austrian Reichsrat, he has enjoyed a peculiarly favorable position for the study of the last phase of the history and politics of the Habsburg monarchy. For a number of years previous to the great war he was engaged upon this investigation. The revolution of 1918 threw open without limitation the archives of the old government and the author has been able to avail himself fully of their contents. We are not advised as to the number of volumes into which the work is expected to extend, but if the period subsequent to

1861 is treated as fully as that covered by the first volume it will require several. It is a truly monumental undertaking and one of very high significance to students of both history and politics.

It is indeed a tragic story which Professor Redlich has to depict, covering as it does the last phase of the dynasty which during most of the time for the last six hundred and fifty years has held the center of the stage in the drama of European politics. More than three centuries before the rise of the Romanoffs, and while the Hohenzollerns were still mere warders of the western marches, the Habsburgs, as bearers of the imperial authority, were the dominant power in Christendom. The last chapter of the history of this ancient ruling house, which substantially coincides with the reign of Franz Josef, is indeed a tragic one.

But it is not primarily the Habsburg dynasty which fixes the author's interest, but what to him is a much more fateful and portentous chapter of human history. He is concerned with the problem which during this period was, not only for the peoples of the dual monarchy, but for all Europe and indeed the world, one of the highest importance—the problem of creating a state, an empire, by the free will and voluntary union of a number of peoples in whom the sense of nationality had become strong and compelling and was continually increasing in strength. The failure to solve this problem is the tragedy which Professor Redlich portrays. The book is “an explanation of how the status of an old and great empire became extremely uncertain; how after numerous failures and many opportunities let slip, the possibility continually recurred of a real comprehension of the problem and at least of its gradual but ultimately satisfactory solution; how this great political idea came to be more and more clearly perceived both by the complex of nationalities and parties and by the ruling authorities themselves; and how after each new proof of the incapacity or the weak purpose both of rulers and ruled to grasp in its full magnitude the problem and the ideal, the doom of fate sounded its warning to both even louder and more threatening.”

The Habsburg empire was not, as so often asserted, a mere artificial piece of governmental mechanism, a political control externally imposed upon a score of nationalities, opposed to nature and having no rootage in the needs of the peoples themselves. For three hundred years and more the Danubian empire had performed the most important political services, both for its own peoples and for the general civilization of Europe. But the development of nationalism and the spread of the

ideas of constitutionalism which came in the wake of the French Revolution necessitated an adjustment which was extremely difficult to achieve. The work of absolute monarchy in the consolidation and unifying of the state had never been accomplished within the domains of the Habsburgs. Could a federalistic and constitutional state be created out of the fragments of empire and the jangling nationalities which in various forms owed allegiance to the Habsburg rulers? That was the problem. It is just because Professor Redlich believes that a solution was possible, but through the blindness and weakness of the human agents was never realized, that the history of this period assumes such tragic character.

WALTER JAMES SHEPARD.

University of Missouri.

The Evolution of Parliament. By A. F. POLLARD. (London and New York: Longmans, Green and Company. 1920. Pp. xi, 398.)

Because of this book Professor Pollard seems to anticipate the institution by medievalists of a series of actions of trespass *quare clausum fregit*. They may indeed find some omissions and a few questionable statements in matters of detail, but of the ultimate verdict of most students of English history the author may feel reasonably secure. And neither is apology necessary for the intrusion into this field of one who is "mainly versed in the history of the sixteenth century"—when he is so well versed as Professor Pollard—for there is probably no perspective of the whole *Evolution of Parliament* better than that of a detailed knowledge of the sixteenth century, a critical period in Parliament's development. It is for this very period in particular that the general theory advocated by Professor Pollard has been pronounced by a recent historian of English law to be "too medieval." This book is, therefore, the more welcome to those who agree with Professor Pollard's main thesis, just because it is the work of one of the most eminent specialists in that field; but the author may have to be prepared for some outcries of outraged historical orthodoxy.

The title is admirably chosen, for a book whose greatest strength is its continued insistence upon the growth of Parliament, as against the older and more orthodox view of its essentially static character, which has been the main obstacle to a real understanding of its working in any period. Lack of space precludes more detailed appreciation of

the author's incisive chapters on the Crown, the council, the peers, and the Commons in Parliament; his treatment of the "Myth of the Three Estates" and the "Fiction of the Peerage;" or his discussion of such more abstract questions as "Parliament and Liberty," or "Sovereignty in Parliament." The gist of Professor Pollard's thesis appears in his statement: "It was to a high court of law and justice that the taxing and representative factors of Parliament were wedded; and it was this union that gave the English Parliament its strength." Students of American institutions will possibly be interested especially in the author's treatment of the separation of powers. He is a little irritated—and not without reason—at the uncritical and absurd characterization of our own system, designed "for the prevention of evil" instead of "the production of good," as "the greatest government God ever made;" but he may be relieved to know that we ourselves are not quite all blind to these defects, and might be reminded that they are in large part a heritage from the old colonial system for which others must share our responsibility.

As indicated above, Professor Pollard's treatment suffers in some minor points from his less familiarity with the medieval period than with the epoch of which he is an acknowledged master, and probably still more from the fact that the preoccupation of the war has deprived him of the help of some recent books, such as Pasquet's *Essai sur les Origines de la Chambre des Communes*, or even much older contributions, as Riess's *Geschichte des Wahlrechts*, or his *Ursprung des englischen Unterhauses* in Sybel's *Historische Zeitschrift* for 1888. But these will be found, not to invalidate, but rather to strengthen the general position taken by Professor Pollard in this book, which is likely to take its place as the most suggestive account yet written of the evolution of Parliament as a whole, valuable alike for the technical historian and the general reader.

For some statements that might need reconsideration or revision in a new edition, the reviewer may be permitted to refer to pages 39 and 248, where the distinction between original and judicial writs seems to be wrongly put; to page 47, where the Rolls of Parliament instead of the Statute Roll are said to begin in 1278; to the identification on pages 66 and 115 of knights and *barones minores*, which Mr. Round has recently disproved; to a similar identification on page 88 of the oath takers at Salisbury in 1086 with the tenants in chief, which is contrary to the statement of Florence of Worcester; to the assertion on page 91 that so old a feudal custom as the *judicum parium* was "a more or less

novel" expedient in 1215; to an apparent confusion of *jus* and *lex* (terms clearly distinguished by twelfth and thirteenth century English jurists) on page 92; to the assertion of an entire absence of instructions to representatives in the middle ages on page 152; to the statements of papal supremacy on page 221, which seem a little higher than those of the medieval popes themselves though not higher than some claims of their adherents; to the author's interpretation on page 241 of the Statute of York of 1322, which to the writer seems to be much weakened if not disproved in Mr. Davies' recent *Baronial Opposition*; and to the statement, on page 292, that the Order of the Coif was "abolished," when it was merely allowed to die a natural death.

There are a few more statements of detail to which some medieval historians may possibly object as over strong or insufficiently guarded, and the peerage lawyers will not like the volume at all. But no historian could possibly write or approve of any account of Parliament with which the latter would agree; and this should not and will not prevent a hearty and general welcome of this book as a thoroughly solid and exceptionally brilliant contribution to English constitutional history.

C. H. McILWAIN.

Harvard University.

English Political Parties and Leaders in the Reign of Queen Anne, 1702-1710. By WILLIAM THOMAS MORGAN. (New Haven: Yale University Press. 1920. Pp. 427.)

This essay was accepted by Yale University as a doctoral dissertation. It was also awarded the Herbert Baxter Adams prize of the American Historical Association in 1919. It is a study of the political and economic conditions, the personages and influences of the period of Anne. The author first sets forth the social and industrial situation in England at the beginning of the eighteenth century—England's relations with the continental powers, the political ideas of the time, the early marks of cleavage between Whig and Tory, the shifting of leaders from one party to another, the influence of the commercial classes, the relation of the Church to theories of divine right and political control.

He then deals in seven or eight compact and well balanced chapters with the influence of the Churchills over Anne and gives a brief characterization of the leading men or political notables of the era—Marl-

borough, Godolphin, Harley, St. John, Sir Edward Seymour, Lord Somers and others. No period in British history presents another such "picture of corruption, venality, unconstitutional influences, court intrigues, unbounded ambition, court favorites." These features of the period are vividly depicted.

The personal influence of the Queen as the last of the Stuarts, her policies and her relations to the Parliament and to parties, the conduct of elections, the game of the politicians, the struggle on conformity and the protestant succession, the struggle with Louis XIV, the part the Queen played as a peacemaker in the conflicts between the Lords and the Commons, her insistence upon ministers who would do her bidding, all these are brought into interesting and clear review.

A chapter is given to the election of 1705, and another to the political influence of the Marlboroughs and Godolphin. The essay also traces the steps in the Anglo-Scottish Union, and for this praise is given chiefly to the Queen.

Professor Morgan shows the result of painstaking and studious research into the sources, the correspondence, letters, and documents of the time. The essay is a very instructive, if not exhaustive study of a notable period in English history—a period of transition from personal to responsible ministerial government. The essay shows that it was not so much at the "Glorious Revolution of 1688" as at the Hanoverian succession following Anne that ministerial government took the place of the royal prerogative in controlling the policy of the state. Anne governed largely by her friends, as George III did. She sought a non-party government and expected her will to control the votes and policies of her ministers. Harley is shown to be the first of the modern leaders of organized and disciplined parties, commanding the support of the Queen on the one hand and the majority of the Commons on the other, at the same time keeping in touch with the currents of public opinion, through men like Defoe.

There is a valuable chapter at the close of the volume summing up the significance of Anne's reign, in which the reader is reminded that under the last of the Stuarts occurred the greatest of English foreign wars up to that time, the union with Scotland, the famous victories of Marlborough, the establishment of the succession, the decline of the power of the Crown over Parliament, and the development of party organization. One by one the favorites who sought to control Anne and her policies were cast aside; all who offended her had cause for repentance. The Duchess of Marlborough, after all, was not so much the power behind the throne as she has been supposed to be.

Professor Morgan's volume is that of a painstaking investigator. He has produced a scholarly and very readable volume which enlightens the reader upon the period of which it treats. The English style is clear and forcible. The author's citations to his authorities and his bibliography are evidence of the industry and extent of his research. The essay will receive, in addition to the award of a notable prize, the recognition of historical scholars in England and America.

JAMES A. WOODBURN.

Indiana University.

A History of the Chartist Movement. By JULIUS WEST. With an introductory Memoir by J. C. SQUIRE. (Boston and New York: Houghton Mifflin Company. 1920. Pp. xii, 316.)

Julius West died in 1918, and his book was published in 1920. There is plenty of internal evidence that it was written some time before his death, and that he was unconscious, while he was writing, that there were three Americans busy on aspects of the same movement. He makes no allusion to *The Chartist Movement* by Frank F. Rosenblatt, *The Decline of the Chartist Movement* by Preston Slosson, or *Chartism and the Churches* by Harold Underwood Faulkner. It is a curious coincidence that five young men—three in the United States and two in England—should have been engaged at the same time in digging up the history of a movement that had been largely neglected by English speaking historians. Both the Englishmen are dead, for Mr. Hovell did not long survive Mr. West; but the service rendered by them survives, and the work of Julius West especially has resulted in weaving the Chartist movement into the political and social life of Great Britain and making it an integral part of the developments both of the nineteenth and twentieth centuries.

It is a curious fact that Chartism has been considered as a movement apart from the rest of English life—a movement with a definite beginning and a definite ending. Mr. West, young as he was, realized that history does not supply us with definite eras, and that there are no beginnings or endings to its fabric. The history that he gives is concise, clearly arranged and characterized by a careful attention to chronological order as well as to the influence of the individual leaders of the movement. Mr. West evidently spared no pains in searching out old newspaper files, and he made ample use of the great storehouse of material accumulated by Francis Place. He familiarized himself not

only with the 93 volumes of Place manuscripts at the British Museum, but also with the 180 volumes, chiefly consisting of press cuttings, owned by the British Museum and stored at the Hendon Annexe. These volumes were carefully collected by Place and cover the earlier years of the movement. But the great value of Mr. West's work lies not so much in its completeness and accuracy, valuable as are these characteristics, as in the fact that he indicates not only the many threads that were drawn together to produce Chartism, but also shows how these threads—separating and diverging, but always continuing—ran into the later movements of British life—into coöperation, into movements for popular education, and into the labor movement which attained such importance during the war. He shows that the Chartist movement was no bubble, blown into momentary impressiveness and then disappearing in nothingness, but rather one wave of an onward coming tide, which ebbed, but was succeeded by other waves using the same water and urged on by the same impetus, which are still advancing, and show no sign of turning back.

A. G. PORRITT.

Hartford, Conn.

The English Reform Bill of 1867. By JOSEPH H. PARK.
(New York. Columbia University. 1920. Pp. 285.)

Among the lines of investigation carried on during many years past under the direction of the faculty of political science in Columbia University not the least interesting and important has been that relating to the development of England during the nineteenth century—which now “belongs to the ages,” and consequently to the historian. To that varied and admirable series of studies on the Chartist movement which appeared some three or four years ago, is now added a history of the Reform Bill of 1867, and the promise of a similar account of franchise reform since 1885. For such work the student of modern English politics cannot be too grateful, for it would seem that English scholars have been too largely content to regard little or nothing of any consequence since 1832.

The present volume, after an introductory chapter on the Great Reform Bill, its defects and developments and the growth of the reform movement until its culmination in the sixties, both in England and on the continent, proceeds to its main theme, which is prefaced by a discussion of the condition of the working classes and the popular and official attitude toward parliamentary reform. Thenceforth the story

revolves, naturally, around Disraeli. And there is no one interested in either English history or in parliamentary government, or in the great magician, who will not find his clear, fair account, both scholarly and entertaining. For Mr. Park has one quality which is, unfortunately, rare in young doctors of philosophy—he can write—almost always—as well as he can investigate.

Naturally he is more or less limited in his material. The completion of Moneyppenny and Buckle's *Life of Disraeli* fortunately came before the publication of his study, and he owes something to its illuminating pages. For the rest he relies upon published material, as one must for such a work, and he has carefully combed the periodicals. Perhaps in writing such history as this we shall always be confined to such sources; though it is just conceivable that there exist letters and memoranda which will throw more light on the question which concerns him much—the real motives of the prime minister in putting forward such a measure at such a time—whether from a real sense of its justice as well as its expediency, whether to dish the Whigs or to help the workingman. That question Mr. Park answers as well as it can be answered in the present state of our knowledge—perhaps as well as it can ever be answered. Yet that question, though it is the most interesting part of the volume, is not the most important contribution which he makes. That contribution lies in the long study of the circumstances which preceded and in some measure compelled the passage of the bill. There he has gathered together a mass of information which, however unsatisfactory in certain particulars, as the author himself is well aware, gives us a better basis of fact for our judgment of mid-nineteenth century England and its politics than we have had before.

Only in one respect would the present reviewer suggest a slight modification of Mr. Park's conclusions as to the results of the bill of 1867, the Tory attitude, and the probable position of Disraeli with regard to the social legislation of the twentieth century. Apart from the great minister's recognition of the fact that it was good if not indeed necessary politics, it is apparent that the Tory attitude, as represented by Disraeli, differed radically from the Liberal attitude as represented by Mr. Gladstone. And that difference, among others, gives Mr. Disraeli a different place in the history of such legislation from that occupied by Mr. Gladstone, irrespective of the quality and character of the two men. They are not in the same political dimension.

W. C. ABBOTT.

Harvard University.

Political Systems in Transition. War-Time and After. By CHARLES G. FENWICK. (New York: The Century Company, 1920. Pp. xix, 322. The Century New World Series.)

This volume is divided into four parts. Part I comprises a brief outline (44 pages) of the constitutional systems of the United States, Great Britain, France, the German Empire and Russia at the opening of the World War. Part II (65 pages) outlines the changes brought about by the war in the political institutions of the principal European countries. Part III (115 pages) sets forth the "constitutional unpreparedness" of the United States at the beginning of the war and the uncertain scope of the war powers of Congress and the Executive. This is followed by an analysis of the emergency legislation enacted by Congress, including fair statements of opposing views upon each important measure. Proposed and actual changes in the national administration are presented in a similar manner. Another chapter gives a résumé of the new legislative and administrative activities of the state governments during the period of the war. Attention is concentrated upon the legal and political aspects of war administration rather than upon its numerous details which have been covered more fully in Willoughby's *Governmental Organization in War Time*.

In Part IV the author discusses (1) the post bellum effects of the appeal to democratic ideals during the war, especially in relation to the duties and obligations of citizenship and the demands for industrial democracy; (2) the chief political problems raised by the war, notably centralization versus decentralization, and the extension of the functions of both state and national governments; and (3) the effect of the war upon the international relations of the United States, and especially the conditions which are essential to the success of any international organization to maintain peace. Parts III and IV are the most valuable portions of the book.

A judicial spirit, a detached point of view, evidence of thorough study and mastery of materials, and a clear, vigorous and attractive style characterize the volume throughout. It should strongly appeal not only to the general reader but also to undergraduates in government courses to whom the book will prove both highly informing and unusually interesting as collateral reading.

P. ORMAN RAY.

Northwestern University.

BRIEFER NOTICES

Lord Bryce's new work on *Modern Democracies*, which has come from the press too late for an adequate review in this issue, is published by the Macmillan Company. The material contained in the two volumes divides itself into three parts. The first, covering 162 pages, relates to the general principles of democratic government. It includes chapters upon such topics as "Democracy and Education," "Democracy and Religion," and "The Press in a Democracy." The second division of the work, covering a much greater portion of it, is allotted to a study of present-day democracies in their actual workings. The countries chosen are France, Switzerland, the United States and some of the British self-governing colonies. The concluding chapters, fifteen of them, set forth the author's observations and reflections upon the past, present and future of democratic government. Lord Bryce's volumes will be of great interest to students of political science everywhere. A comprehensive review of the work will appear in the next issue of this periodical.

Messrs. Charles Scribner's Sons have published a *Life of Joseph Hodges Choate* (2 vols., pp. 471, 439) by E. S. Martin, the widely-known New York journalist. As a constitutional jurist of great prominence as well as an ambassador to the court of St. James, Mr. Choate found himself placed very close to things of high public importance and his letters contain a great deal of interesting comment. He was a prolific correspondent and for that reason has become a large contributor to his own biography. Mr. Choate's writings, public and private, make up by far the larger part of the two volumes. They afford a remarkably good delineation of the way in which a great lawyer and man of affairs looked upon the various aspects of American life during the decades immediately before and after the turn of the century.

The same publishers have also issued Royal Cortissoz's *Life of Whitelaw Reid* (2 vols., pp. 424, 472). Apart from the fact that Choate and Reid were both New Yorkers and served as ambassadors to Great Britain, their careers, interests and points of view were not at all alike. Whitelaw Reid's journalistic impulses carried his interests over a wider area, and there was scarcely any great event in the world's history from the nomination of Lincoln to the death of Edward VII on which Mr. Reid's biographer does not find data for a chapter. These volumes make an appeal to the general reader by virtue of their cosmopolitan-

ism; they likewise contain a good deal of material which is of permanent value to the student of diplomacy, public affairs, and particularly to the future historian of American journalism. Mr. Reid was fortunate in his career and he is fortunate also in his biographer. Mr. Cortissoz has done his work extremely well.

Under the auspices of the Institute for International Affairs the Oxford University Press has published *A History of the Peace Conference of Paris* (3 vols., pp. 517, 488, 457), edited by H. W. V. Temperley. The first two volumes contain a series of chapters upon the war, the German Revolution, the armistice and the work of the Peace Conference by sixteen writers, most of them associated with Oxford and Cambridge. The third volume contains chronologies, notes and documents, among the latter being a translation of the new German constitution. The contributed articles are of unequal value, but taken as a whole they give a fair portrayal of the various problems as Englishmen were disposed to see them. The volume of documents is particularly useful.

Mr. Lansing's account of the on-goings in Paris is contained in a volume on *The Peace Negotiations—A Personal Narrative* (pp. 328) which was published during the latter part of March by the Houghton Mifflin Company. There was a general expectation that Mr. Lansing, in this recital, would venture to tell the world some things that it did not know before; but the volume contains little more than a reiteration of what close observers had already recorded, or, at least, strongly suspected. The extracts from Mr. Lansing's own journal and the copies of memoranda which he prepared during the negotiations are of considerable value. These deal particularly with the general plan for a league of nations and show the way in which the ultimate provisions of the covenant were evolved. The President's original draft and Lord Robert Cecil's plan are included side by side in the appendices. Chapters are devoted to the system of mandates, the proposed treaty of guaranty with France, the Shantung settlement and the Bullitt affair.

Another American contribution to our knowledge of the Paris negotiations is Bernard M. Baruch's *Making of the Reparation and Economic Sections of the Treaty* (pp. 353) published by Messrs. Harper and Brothers. The author was prominent among the "economic advisers" of the American delegation, and as a member of the economic drafting

committee took an active part in the work of the conference. His aim in this volume is to indicate the American attitude towards the economic and reparation clauses, to show how far this attitude governed the outcome, and to answer the question whether American interests were adequately protected during these negotiations. More than half the book is given over to a reprint of the economic and reparation clauses as finally embodied in the treaty.

The *Collected Legal Papers* of Mr. Justice Holmes of the United States Supreme Court have been published by Messrs. Harcourt, Brace and Howe (pp. 316). Although the author speaks of these papers as "little fragments of my fleece that I have left upon the hedges of life," their value is by no means inconsequential nor will their appeal be solely to students of constitutional jurisprudence. The volume includes all the writer's legal addresses and papers during a period of nearly forty years, beginning with his article on "Early English Equity" which appeared in 1880 and finishing with a brief deliverance on the conception of "Natural Law" written in 1918. Between the two are essays on Bracton, Montesquieu and Marshall, addresses on a variety of legal topics and opinions on matters more or less closely related to the administration of the law. It has always been the habit of Mr. Justice Holmes to think unconventionally and to write pungently. The reader will find very few dull pages in this book.

That the "lost cause" still retains its staunch adherents is demonstrated by the recent publication of Bunford Samuel's *Secession and Constitutional Liberty* (Neale Publishing Company, 2 vols., pp. 403, 435). The author's aim, as indicated upon his title page, is to show that a nation has a right to secede from a compact of federation and "that such right is necessary to constitutional liberty." To this end he begins with a statement of the doctrine of secession as set forth by the Confederate authorities when they asked recognition from France in 1862. With this as a starting point he proceeds to demonstrate from the Declaration of Independence, the Articles of Confederation and the records of the Constitutional Convention that the states which came into the union became parties to a compact quite unlike an ordinary contract between individuals. The compact among the states, Mr. Samuel contends, was analogous to a treaty among nations, in that "a breach of any one article, by any one party, leaves all the other parties at liberty to consider the whole convention as dissolved" (p. 80).

This argument is reinforced by an appeal to the writings of Madison and others. There is a chapter on "The Ethical Question Involved." All this makes up, however, a small portion (about one-eighth) of the two volumes. The rest of the work is given over to documentary appendices and it is these that give the book such value as it may have.

A volume which deserves attention because of its rather unusual point of view is Alfred B. Cruikshank's *Popular Misgovernment in the United States* (pp. 455) published by Messrs. Moffat, Yard and Company. The author, who is a retired New York lawyer, endeavors to prove that most of the world's political ills have come from the widening of the suffrage and from looking upon the right to vote as a "natural right." The origin of manhood suffrage he finds in the Terrorist administration of Revolutionary France, whence it made its way across the seas and eventually unseated the American tradition of a property qualification. The safeguard of a property qualification, he contends, was discarded by a generation of Americans who failed to realize its value. Among other things "directly chargeable to manhood suffrage" the author includes the Civil War. While extreme positions are assumed in several chapters of the book there are nevertheless some fairly good discussions of various topics more or less closely allied to the suffrage question. The author earnestly advocates the re-establishment of a property qualification as the only adequate safeguard against corruption and communism.

The State and Government (D. Appleton and Company, pp. 409) by Professor James Q. Dealey, is announced as "an introduction to political science from the sociological point of view." It is not a description of American government alone, nor indeed of any one form of government, but rather of those essentials which are characteristic of all governmental systems. The book begins with a survey of the relations which exist between government and other social institutions and then proceeds to outline the development of governmental mechanism. This is followed by an analysis of present-day governmental organization and functions with additional chapters on political parties, the rights and obligations of citizens, national politics, and the growth of democracy. As an epitome of political science the book is well-balanced and accurately written. It forms a logical supplement to the author's earlier volume on *The Development of the State*. A well-selected bibliography is appended.

The two concluding volumes of *Debates in the Constitutional Convention* of Massachusetts have come from the press (Vols. III and IV, pp. 1352, 555). The convention's *Journal* (pp. 970) now completes the publications of this body, its proceedings having run to seven large volumes, to wit, a journal, four volumes of debates, and two of bulletins. These publications, either as a set or individually, may be had at a nominal price from the State Library of Massachusetts.

The Neale Publishing Company is sponsor for a volume on *The Relation of the Judiciary to the Constitution* by William M. Meigs (pp. 248). The author argues that "the judiciary was plainly pointed out by our history for the vast function it has exercised, and that it was expected and intended, both by the Federal Convention and by the publicists of the day, to exercise that function."

Messrs. Longmans, Green and Company are bringing out a third edition of Oppenheim's *International Law*, edited by Ronald F. Roxburgh, and the first volume of the new edition is now on sale (799 pp.). This initial volume deals with the law of nations in time of peace. It represents an extensive and thorough revision of Oppenheim's earlier work.

Safeguards of Liberty by W. B. Swaney (Oxford University Press, pp. 210) presents in compact form the progress of civil liberty as shown in English and American charters, in the writings of statesmen, and in various other documents. The book is made up in the main of excerpts from these sources with comments thereon by the author.

The Century Company has recently published a volume on *French Foreign Policy, 1898-1914* (pp. 392) by Graham H. Stuart of the University of Wisconsin. The author has endeavored to give a fair account of French foreign policy from the time of the Fashoda incident to the eve of the World War. An introductory chapter explains the general international situation as it existed in 1898; successive chapters deal with French diplomacy as respects questions at issue in Africa and the Orient. Such topics as the formation of the Entente, the fall of Delcassé, and the Moroccan embroglio receive particular attention. The author's work is based upon authoritative materials, but his book is not a mere welding together of extracts from official documents. The

narrative is coherent, clear and well-written. No one can write intelligibly of French diplomacy without giving his readers a glimpse into the chancelleries of other European nations. Dr. Stuart's book is, therefore, to a considerable extent a general treatise on the golden age of secret covenants secretly arrived at. The pawns shifted quickly on the chessboard of international politics during these sixteen years and this book of nearly four hundred pages affords its author no excess of space for describing the various moves. Dr. Stuart has lost no opportunity to make his theme interesting to the American reader.

Two volumes of memoirs by Russian diplomats throw some light upon the attitude of that country towards various European questions during the years preceding the war. M. Nekludoff's *Diplomatic Reminiscences* (E. P. Dutton and Company, pp. 541) covers the years 1911-1917 and deals in an illuminating way with the tangled problems of the Balkan states. Those who desire to get a clear understanding of Russia's attitude toward the first and second Balkan wars will find this volume extremely helpful. Alexander Iswolksy's posthumous memoirs which have been issued under the title: *Recollections of a Foreign Minister* (Doubleday, Page and Company, pp. 303) reveal the origins of the Triple Entente and contain, among other things, a striking chapter on the secret treaty of Bjorkoe. The author seems to have been thoroughly master of his facts and well this may be, for he was Russian Minister of Foreign Affairs from 1906 to 1910 and ambassador in Paris from the latter date until the Russian revolution. His chapter on Count Serge Witte is a very skillful delineation of a statesman whom the world never adequately understood. The entire volume is liberal in attitude, temperate in tone and extremely readable.

A vigorous defense of representative government is embodied in Alleyne Ireland's *Democracy and the Human Equation* (E. P. Dutton and Company, pp. 251). The publishers are doubtless warranted in introducing the author to his prospective readers as a man who has "spent his life investigating and studying systems of government in various parts of the globe," but the farther assertion that "he is certainly the greatest authority on the subject in any English-speaking country" will hardly command universal assent. Be this as it may, the title of Mr. Ireland's book gives a clue to its main line of argument which is that government, being created and managed by human beings, is dominated in every phase by the human equation—not an altogether

novel thesis by any means. The author is particularly concerned with the "flank-attack" which is now being made upon the principles of representative government by the initiative, referendum and recall. He believes that the growing complexity of governmental tasks demands the better training of all administrative officials. Mr. Ireland argues cogently and writes well. He has a considerable grasp of political literature and has inserted an unusual number of quotations in his text. His discussion, however, is at times aggressively partisan and betrays a rather scant tolerance for diverging opinions.

The Lawyers Coöperative Publishing Company has issued a volume on *The Constitutional Law of the Philippine Islands* (pp. xxiii, 702), by George A. Malcolm, associate justice of the supreme court and professor of public law in the University of the Philippines. Part I deals with general principles, written constitutions, and the interpretation of constitutions. Part II gives brief accounts of the constitutions of England, the United States, Australia, Cuba, Mexico, Japan and the Malolos constitution for the Philippines. The remaining three parts are devoted to the main subject of the volume. A number of documents are published as appendices, including the Jones Law and the Malolos constitution.

Hilaire Belloc has launched bravely into political controversy with a book on *The House of Commons and Monarchy* (George Allen and Unwin, pp. 188). The thesis of the book is as follows: England, as an aristocratic state, built up a system of parliamentary government; but the aristocratic character of the English state has now broken down and the parliamentary system is fast disintegrating with it. The House of Commons cannot be reformed, either from within or from without, so it will presently cease to function. Of dogmatism there is quite enough and to spare in the book, but the author's grasp of parliamentary history, on which he at times relies to prove his point, is not impressive.

Sir Henry Lucy, whose facile and veracious pen contributed to the pages of *Punch* for many years under the pseudonym of "Toby, M.P." has published some of his reminiscences in *The Diary of a Journalist* (E. P. Dutton and Company, pp. 340). Readers who are familiar with Sir Henry's *Sixty Years in the Wilderness* need only be told that the present volume is of equal or even greater merit in the cleverness with which it illumines the bypaths of English parliamentary history.

The Days Before Yesterday (Hodder and Stoughton, pp. 342) by Lord Frederic Hamilton contains the engaging chronicles of one whose official duties took him to the capitals of many countries. The volume deals with matters of no great account in themselves but the author's skill as a *raconteur* atones for whatever may be lacking in the importance of his theme. Out of his random reminiscences Lord Frederic has managed to make a most entertaining and on the whole a rather instructive book.

The publishers of *The Taint in Politics* (Dodd, Mead and Company, pp. 258) vouchsafe us no farther information than that the book is "by a well-known English author." It is a study of machine politics in England during the past couple of centuries with special emphasis upon the period since Parliament was "reformed." Books of this sort are not scarce in the literature of American politics but one is rather surprised to learn that "the machine" has been functioning so effectively overseas. If the anonymous writer is as credulous, however, about things in his own country as he seems to be about political chicanery and wrongdoing in America (see pp. 140 ff.) his readers should be given a word of caution.

Studies in Statecraft by Sir Geoffrey Butler (Cambridge: The University Press, pp. 138) contains five essays on various subjects, chiefly biographical and for the most part in the sixteenth century. Among these essays particular mention may be made of those on "William Postel," "World Peace through World Power" and "Sully and his Grand Design."

Messrs. E. P. Dutton and Company have brought out a little volume on *Principles of Freedom* (pp. 244) by the late Terence MacSwiney. The book deals with such varied topics as "Moral Force," " Militarism," and "Intellectual Freedom."

Jean-Jacques Rousseau's two essays on *L'État de Guerre* and *Projet de Paix Perpetuelle* have been reprinted in English by Messrs. G. P. Putnam's Sons (pp. lv, 90). The introduction and notes are by Professor Shirley G. Patterson of Dartmouth College.

Professor Robert M. Haig has edited a series of lectures delivered at Columbia University in December, 1920, on the *Federal Income Tax*

published under that title by the Columbia University Press. Professor Seligman, in his introduction to this volume, claims that the addresses contained therein constitute the most signal attempt that has yet been made in any country to elucidate the basic principles of importance to the framer, the administrator, and the payer of the modern income tax. This claim seems to be justified. The addresses go to the heart of the income tax problem; their authors are experts of the highest authority in the treatment of their several subjects; and the treatment itself is, as a whole, well-informed and keenly critical. There is no more useful book for the political scientist or economist who wishes to investigate the theory or practice of modern income taxation.

Great American Issues (pp. 274) by John Hays Hammond and Jeremiah W. Jenks is the title of a work recently published by Messrs. Charles Scribner's Sons. The book takes up, one by one, the various political and economic problems which are bulking largest in the discussions of today—such matters, for example, as unemployment, immigration, the tariff and the problems of foreign exchange. In each case the problem is defined and the main difficulties of the way of its solution are set forth. The latter part of the book deals with various proposals for getting out of our present difficulties. The book is discriminating in its selection of topics, the material is well-arranged and the method of presentation is good.

Among the flood of books relating to this subject the modest volume on *The Problem of Americanization* (Macmillan Company, pp. 246) by Peter Roberts deserves special mention. It is a plain and terse statement of what Americanization means and how we can best hope to get results from it. There are useful chapters on such topics as "Teaching English," "Naturalization," "Recreational Activities" and "The Approach to the Foreign Born." The purpose of the book is to aid men and women who are now devoting their energies to Americanization work and to such it will undoubtedly prove useful.

The latest addition to the Debaters' Handbook Series, published by the H. W. Wilson Company, is a third volume on *National Defense* (pp. 279) edited by Julia E. Johnsen. It contains articles and references on army organization, the cost of the war, military service, disarmament, etc., making a very serviceable compilation on a subject of present-day interest.

The Oxford University Press has brought out the first volume of a work on *Historical Jurisprudence* by Sir Paul Vinogradoff (pp. 428). This initial volume contains the author's introduction to the subject (an essay of 162 pages) and a series of chapters on "Tribal Law." The introduction includes a discussion of the relation between law and political theory. A second volume on *The Jurisprudence of the Greek City* will appear shortly. It is the author's intention to proceed with further installments of his study but no announcement of the exact scope of these later volumes has yet been made.

An extremely serviceable volume on *Europe 1789-1920* by Professor E. R. Turner of the University of Michigan has come from the press of Messrs. Doubleday, Page and Company (pp. 687). The strong features of this book, as they will be viewed by students of political science, are its clear outline of governmental development in the various European countries, its scrupulously fair attitude, its readable style and its excellent maps. The bibliographies at the close of each chapter are admirable.

Walter Geer's *Napoleon the Third* (Brentano's, pp. 348) is a very handsomely printed volume the contents of which are aptly indicated by its subtitle "The Romance of an Emperor." While the book adds nothing to what is already known about the political happenings of the Third Empire, it presents the Emperor's side of the case rather effectively and still leaves the reader with the impression that the author is endeavoring to be impartial.

The New World Order by F. C. Hicks (Doubleday, Page and Company, pp. 406) deals with the League of Nations as a functioning part of the world's political mechanism. The author tries to show the league's possible relationships. The book is conservatively written and on the whole lets the facts speak for themselves. Many useful documents are included in the appendices.

With an almost identical title *The New World* by Frank Comerford (D. Appleton and Company, pp. 364) is a book dealing with a wholly different theme. Mr. Comerford's volume is devoted chiefly to the subject of Bolshevism in its various phases. A chapter on "Bolshevism in the United States" is included.

The Princeton University Press has published Professor Harold M. Vinacke's *Modern Constitutional Development in China* (pp. 280). The book deals with its subject from the inception of reform in 1898 down to the present time.

The Press and Politics in Japan by Kisaburō Kawabé has been issued from the University of Chicago Press (pp. 190). The author's purpose is to show the considerable part played by the Japanese press in the political development of his country.

A booklet on *Conservative Democracy* by Paul Kester, dealing chiefly with the contrast between democracy and socialism, has been printed by the Bobbs-Merrill Company (pp. 82).

The Macmillan Company has added to its lists of elementary texts a new *Community Civics* (pp. 387) by Edgar W. Ames and Arvie Eldred.

A new edition of F. A. Magruder's text book for schools has been issued under the title *American Government in 1921* (Allyn and Bacon, pp. 460 and index).

The Jew and American Ideals by John Spargo is published by Messrs. Harper and Brothers (pp. 148). The book is not a defense of the Jew but a plea for adherence to American ideals in the face of anti-Semitic propaganda. Particular attention is given to the alleged relationship between the Jews and the Socialists.

Under the title *College and Commonwealth* (pp. 420) the Century Company has published a series of addresses and papers by President John A. MacCracken of Lafayette College. These addresses deal chiefly with education, but with education in the larger sense, including its relation to government, to industry and to American ideals.

The Society for Promoting Christian Knowledge has issued, as one of its recent publications, a small volume on *Life in a Mediaeval City* by Edwin Benson (pp. 84). It is a study of political, social and economic life in York during the fifteenth century.

RECENT PUBLICATIONS OF POLITICAL INTEREST

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CLARENCE A. BERDAHL

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